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No. 14  
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54-1212-800-2616

OF

# THE UNIVERSITY OF TEXAS

No. 262

ISSUED FOUR TIMES A MONTH

HUMANISTIC SERIES No. 14

JANUARY 8, 1913

## *Athenian Clubs in Politics and Litigation*

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PUBLISHED BY  
THE UNIVERSITY OF TEXAS  
AUSTIN, TEXAS

189505-  
16-5-24

*Entered as second-class mail matter at the postoffice at  
Austin, Texas*





## PREFATORY NOTE

The subject of this study was first suggested by Associate Professor Robert J. Bonner, of the University of Chicago, when I was attending his research course in Greek history. At every stage of the investigation, Professor Bonner's suggestion, criticism, and assistance have been generously given and gratefully received, and my indebtedness to his sound scholarship and inspiring teaching cannot be overstated. I wish also to express my gratitude to Professor Paul Shorey, of the University of Chicago, and Dr. Hazel Louise Brown, of Chicago, for their active interest and helpful suggestions; to Professor W. J. Battle, Dr. F. B. Marsh, and Adjunct Professor D. A. Penick, of the University of Texas, for assistance with the proofs, and to Mr. S. G. Sanders, fellow in Greek in the University of Texas, for help in compiling the register of passages and in proof-reading. And lastly, acknowledgment may here be made of the constant encouragement and inspiration which I have received in the course of my work from my parents and from my good friend Dr. J. H. Mills, of Tulane University.

GEORGE MILLER CALHOUN.

THE UNIVERSITY OF TEXAS,  
January, 1913.





TABLE OF CONTENTS

CHAPTER I. INTRODUCTORY . . . . . 1

CHAPTER II. THE ORIGIN AND CONDITION OF THE CLUBS . 10  
Origin and Development—Political Tendencies—Social  
Features—Basis of Membership—Size—Names—Oaths  
and Pledges—Initiations—Secrecy—The Bond of Club  
Membership.

CHAPTER III. THE CLUBS IN LITIGATION . . . . . 40  
Introductory—Money Contributions—Friendly Prosecu-  
tions—Counter Suits—Antidosis—Creating Sentiment—  
Dissuasion of Accusers—Assassination and Violence—  
Pleading at the Proboule—Influence upon the Jury—Evi-  
dence—The Suppression of Evidence—The Pleading of  
Advocates—The Dissuasion of Advocates—Interest with  
Officials—Information Regarding Opponent's Case—Mis-  
cellaneous Expedients—Types of Clubs Represented.

CHAPTER IV. THE CLUBS IN THE POLITICAL FIELD . . . . 97  
Introductory—Litigation as a Political Weapon—Assas-  
sination—Deliberative Assemblies—Elections—Ostracism  
—Foreign Intervention and Prodosia.

BIBLIOGRAPHY . . . . . 149

INDEX . . . . . 153

REGISTER OF PASSAGES . . . . . 161



# CHAPTER I

## INTRODUCTORY

Thucydides, describing the extension to Athens of the oligarchic movement which had its inception in Samos in 411, states that Pisander visited the "sworn associations which already existed in the state for the management of lawsuits and elections," τὰς τε ξυνωμοσίας, αἵπερ ἐτύγχανον πρότερον ἐν τῇ πόλει οὔσαι ἐπὶ δίκαις καὶ ἀρχαῖς,<sup>1</sup> and persuaded them to unite for the purpose of overthrowing the democracy. This was no slight and insignificant faction which was thus arrayed against the democracy. The formidable political strength comprised in the membership of these clubs is attested by the two occasions on which they were able completely to dominate the state. We know further that individual clubs were at all times factors of the utmost importance in the political and litigious activities of the Athenians. Themistocles, for example, the shrewd and successful politician *par excellence*, was quick to perceive the tremendous advantage of club affiliations, and his first step toward the accomplishment of his ambitions was enrollment in a hetaery.<sup>2</sup> Aristides, in whom the opposite type of statesman found its consummate expression according to ancient ideals, is cited as the great exception to the common practice of the age, as the one man who attained to political eminence solely by personal worth and integrity, unsupported by club affiliations. For he, according to Plutarch, kept aloof from clubs, believing that the power derived from such associations was an incentive to unjust action.<sup>3</sup> Socrates also was an exception to the general custom. In the Platonic *Apology*, he affirms that it would have been possible for him to have escaped conviction had he been willing to devote himself to those matters which engage the attention of the majority at Athens—finance, the attainment of office, political parties, and clubs.<sup>4</sup> This strongly suggests that membership in clubs was not confined to a few,

<sup>1</sup>Thuc. 8. 54. 4.

<sup>2</sup>Plut. *Arist.* 2.

<sup>3</sup>Plut. *Arist.* 2.

<sup>4</sup>36B; cf. *infra* p. 23. n. 1.



but was for the average citizen the necessary and usual means of defense against the attacks of enemies. That it was a prerequisite of success in the political field may be inferred from the number of great names in Athenian history which are associated with clubs.<sup>1</sup> That the hetaerics wielded so powerful an influence in the state and that membership in them was so usual bespeak a tremendous efficiency in the prosecution of the ends for which they existed. To what was this efficiency due? What were the details of their organization? What were the exact methods by which they promoted the interests of their members in politics and aided them in litigation? These are the questions which the words of Thucydides suggest. The answers, if satisfactory answers can be made, should constitute a valuable commentary upon the practical politics and the legal dexterity of the Athenians.

Several monographs have dealt with the clubs. In 1814 Hüllmann discussed them briefly in his essay *De Atheniensium συνωμοσίαις ἐπὶ δίκαις καὶ ἀρχαῖς* (Königsberg: 1814), in which he attempted to maintain the thesis that they were a sort of "Bestechungsgesellschaften," and accomplished their ends chiefly by bribery.<sup>2</sup> Some years later, Wilhelm Vischer published *Die oligarchische Partei und die Hetairien in Athen*<sup>3</sup> (Basel: 1836), which has remained the standard work of reference on the subject. No serious attempt is made to deal with details or methods. This topic is dismissed with a perfunctory page of suggestions, mainly *a priori* in character, and a cursory allusion to jury bribing and the treasonable tendencies of Greek political clubs in general.<sup>4</sup> The study is primarily concerned with general political movements and situations, and is, as was doubtless intended, little more than an enumeration of clubs and a discussion of their relations to the oligarchic party. That this viewpoint should lead to some misconceptions in regard to the origin and status of the clubs is but

<sup>1</sup>For a partial enumeration of prominent men who belonged to clubs, cf. *infra* pp. 18-19. The tremendous power and importance of the clubs can only be realized at the conclusion of a detailed study; to cite in this introduction all of the instances which lead to this view is of course impracticable.

<sup>2</sup>Cf. *infra* p. 69. I have been unable to procure Hüllmann's work, and have been obliged to depend on the reports of his conclusions made by other scholars who have discussed the clubs. Vischer was not able to secure the monograph when he wrote his study in 1836 at Basel.

<sup>3</sup>Republished in *Kleine Schriften* (Leipzig: 1877) I. pp. 153-204.

<sup>4</sup>Pp. 171-72.

natural. But, even were Vischer's conclusions to be accepted *in toto*, there would still remain much to be done.<sup>1</sup> Büttner's *Geschichte der politischen Hetärieen in Athen* (Leipzig: 1840), while on certain points it corrects and supplements Vischer's work, makes but a slight advance. Büttner also is concerned chiefly with general tendencies, and his work could more properly be termed a history of political parties than of political clubs.<sup>2</sup> The question of the methods employed by clubs he frankly professes himself unable to answer.<sup>3</sup> In addition to these more pretentious studies, the clubs have been made the subject of numerous brief and somewhat perfunctory discussions by commentators upon the Thucydides passage and by historians of the Four Hundred.<sup>4</sup> But few of these raise the question of details or methods; none of them affords a treatment which is at all adequate, and the great majority give bare recapitulations of Vischer's more obvious conclusions. Thus a discussion of his treatment is for all practical purposes a sufficient discussion of all that has been written upon the subject. Although nearly a century has elapsed since Hüllmann published his study, we are still without a satisfactory account of the ways in which the clubs worked, and Goodhart, commenting upon the Thucydides pass-

<sup>1</sup>Vischer completed in a satisfactory manner the work which he proposed, a history of the *oligarchie* party and its clubs; the fault, if fault there be, lies not with him but with those who cite his article for detailed information which it does not profess to give. The present study is not a criticism of, but is intended rather to supplement the work of Vischer. Reservations, and criticisms of his conclusions, will be indicated from time to time in the course of the work. The information contained in the Aristotelian *Constitution of Athens* would doubtless have affected some of Vischer's views.

<sup>2</sup>The gravest fault in Büttner's treatment is the failure to distinguish between the clubs and the larger parties or factions which they made up, a distinction which is almost entirely lost sight of.

<sup>3</sup>P. 77.

<sup>4</sup>Wattenbach *De Quadringentorum Athenis factione* (Berlin: 1842) pp. 28, 32 ff.; Rospatt *Die politischen Parteien Griechenlands* (Trier: 1844) pp. 65 ff.; Schoemann *Griechische Alterthümer* (Berlin: 1897) I. pp. 190, 383; Ziebarth *Das griechische Vereinswesen* (Leipzig: 1896) pp. 92 ff.; Whibley *Political Parties at Athens* (Cambridge: 1889) pp. 83 ff.; Headlam *Election by Lot at Athens* (Cambridge: 1891) pp. 33-35; Scheibe *Die oligarchische Umwälzung zu Athen* (Leipzig: 1841) pp. 4 ff.; de Vos *De Sycophantis* (Amsterdam: 1868) pp. 49-51; Hermann-Thumser *Lehrbuch der griechischen Staatsaltertümer* (Freiburg: 1889) pp. 656, 709 ff.; Beloch *Die attische Politik seit Perikles* (Leipzig: 1884) pp. 12 ff.; Gilbert *The Constitutional Antiquities of Athens and Sparta* (London: 1895) pp. 141-42, *Beiträge zur innern Geschichte Athens* (Leipzig: 1877) pp. 84 ff. and the literature quoted by Hermann-Thumser, *loc. cit.*

age, remarks: "Unfortunately, though we have frequent allusions to them (the clubs) in the orators, there is almost no information as to details."<sup>1</sup>

The present investigation is but incidentally concerned with the origin or the history of the clubs. It will be necessary to touch upon these questions somewhat in order to correct misapprehensions or to call attention to facts that have not hitherto been noted in this connection. But the primary intent of this study is to collect all available information upon the actual workings of the clubs, and to describe as well as may be the precise methods by which they effected their purposes. To do this, it will be necessary not only to consider the actual instances of club activity but also to inquire just what opportunities for intrigue and machination were offered by the Athenian judicial and political machinery. The discussion is then a two-fold one. It is at once an account of the tactics which hetaeries are known actually to have employed, and a study of practical political and legal method. Therefore the cases which undoubtedly originated with hetaeries are supplemented by a number of others in which no mention is made of clubs, but which are of great value because they help to illustrate more fully the ways in which hetaeries could and doubtless did work. For example, clubs are seen to have made use in litigation of what has been termed the "counter-suit," but the case which is most fully described and which therefore best illustrates the detailed workings of the scheme is not one of those which are known to have originated with hetaeries.

It has proved convenient to consider, first, theories of origin and the organization of the clubs; second, their activities in litigation; third, their political methods.

#### TERMINOLOGY

The terminology which is employed by ancient writers to designate the political clubs is both varied and elastic. The most distinctive appellations for a "club" are *ἑταιρεία* and *συνωμοσία*; for a "clubman" *ἑταῖρος*, and, less frequently, *συνωμότης*. However, not only are these words found in other

<sup>1</sup>*Thucydides*, Book VIII, note to 54. 4.



meanings, but clubs are frequently spoken of in more general terms or referred to by implication, especially in the orators. A brief preliminary survey of the terminology will be useful.

As early as Homer, *ἑταῖρος* is used, in certain passages, of men who are united by a peculiar relationship, distinct from ordinary friendship or mere companionship in arms.<sup>1</sup> In the classic period the word may designate a political adherent or "partisan,"<sup>2</sup> and is also firmly fixed in the special meaning of "clubman," "associate in a hetaery."<sup>3</sup>

*Συνωμότης*, which involves the idea of oath-bound companionship, usually occurs in the sense of "conspirator,"<sup>4</sup> but is at times employed as a synonym for *ἑταῖρος* and means "clubman."<sup>5</sup>

Other words also, which were originally without political significance, are used in this special sense. *Ἐπιτηδέιος*, which was admirably adapted to the requirements of party phraseology,<sup>6</sup> may be a synonym for *ἑταῖρος*.<sup>7</sup> *Φίλος* is also used in this way.<sup>8</sup>

*Ἐταιρεία*,<sup>9</sup> as an abstract noun, signifies the relationship

<sup>1</sup>See Finsler "Das homerische Königthum" *Neue Jahrbücher* XVII. (1906) pp. 313 ff., and *infra* pp. 14-15.

<sup>2</sup>Cf. Plato *Gorgias* 510A: τῆς ὑπαρχούσης πολιτείας ἑταῖρον εἶναι; *Apol.* 21A: ἐμός τε ἑταῖρος ἦν ἐκ νέου καὶ ἡμῶν τῷ πλήθει ἑταῖρος (in the two meanings of "friend" and "partisan"); *Plut. Arist.* 2. 1. See also the play on the word in *Aristoph. Knights* 589-90: Νίκηρ ἢ χορικῶν ἐστὶν ἑταῖρα τοῖς τ' ἐχθροῖσι μεθ' ἡμῶν στασιάξει.

<sup>3</sup>*Thuc.* 8. 48. 4, 65. 2, 92. 4; *And.* 1. 54; [4. 4, 14]; *fr. or.* 2=*Plut. Them.* 32; *Dem.* 21. 20; 54. 35, 39; *Lys.* 12. 43; 13. 19 (cf. *infra* p. 96 n. 1); *Plut. Per.* 7, 16; *Cimon* 17; *Arist.* 2: οὐ βουλόμενος συναδικεῖν τοῖς ἑταῖροις; cf. *Plato Rep.* 443A; *Aristoph. Lysis.* 1153; *Schol. to Aristoph. Knights* 1085. I shall use "associate" as a convenient English equivalent of *ἑταῖρος* in the course of this study. *Ἐταῖρος* has also non-political uses. In Homer it may mean "friend," "companion," or "follower," "attendant," and is used of the retinue of the Homeric chieftains (cf. *infra* p. 15. n. 3). As "friend," "comrade," "age-fellow," or "pupil," *ἑταῖρος* is found in the literature of every period.

<sup>4</sup>*Thuc.* 6. 57. 2.

<sup>5</sup>*Lys.* 12. 43; [*And.*] 4. 4; *Plut. Solon* 12; *Aristoph. Knights* 257, 452, 628, 862; *Wasps* 345, 483, 488, 507, 953 (cf. *infra* p. 8. n. 7).

<sup>6</sup>*Thuc.* 8. 48. 2: ξυνίστασάν τε τῶν ἀνθρώπων τοὺς ἐπιτηδέιους ἐς ξυνωμοσίαν; 5. 76. 2; 6. 64. 2; cf. *ἀνεπιτηδέιος*, *Thuc.* 8. 65. 2; and *ἐπιτηδέιος ὑπεξαίρεθῆναι* = *ἀνεπιτηδέιος*, *Thuc.* 8. 70. 2.

<sup>7</sup>*Isoc.* 16. 8; *And.* 1. 63; *Lys.* 13. 19 (cf. *infra* p. 96. n 1).

<sup>8</sup>*Isoc.* 16. 8; *Thuc.* 1. 126. 5; *Plut. Lys.* 21; *Mor.* 186A.

<sup>9</sup>It is now generally admitted that no distinction of meaning between *ἑταιρεία* and *ἑταιρία* can be maintained (cf. Liddell & Scott, s. v. *ἑταιρεία* and *ἀνδρεία*). *Ἐταιρεία* is of course not restricted to political clubs. In the Roman period "trade guilds" were sometimes called *ἑταιρεῖαι*.

of *ἑταῖροι*, the bond which united the members of a political club.<sup>1</sup> As a concrete noun, it became the customary and definite designation of a club of which the interests were chiefly political, and which was devoted either wholly or in part to the support of its members in politics and litigation. In this sense, it is found in a great many passages.<sup>2</sup> *Ἐταιρικόν*, τὸ *ἑταιρικόν*, are at times synonymous with *ἑταιρεία*. They may refer either to a single club,<sup>3</sup> or to a combination of clubs, "the club element."<sup>4</sup> *Ἐταιρικόν* also occurs in the abstract meaning of the relation *ἑταιρεία*.<sup>5</sup>

*Συνωμοσία* usually means "conspiracy," and is used of temporary sworn combinations and cabals which were formed from time to time at Athens and elsewhere, and which might be composed of a few men merely or might include a number of hetaerics.<sup>6</sup> But it is also employed, as a synonym for *ἑταιρεία*, to designate a political club,<sup>7</sup> and similarly has the abstract meaning of the club relation or bond.<sup>8</sup>

<sup>1</sup>Dem. 29. 22-23; Thuc. 3. 82. 5: τῆς τε *ἑταιρίας* διαλύτης (this may be the concrete use); And. 1. 100 (where *ἑταιρεία* is punned on by *ἡγαιήσας*). *Ἐταιρεία* is also used, especially by the poets, of non-political friendships; even here, however, there is often a suggestion of more than *φιλία*. It is probably in the abstract sense that the word is used in the newly-discovered *Δῆμοι* of Eupolis (IV. line 6: τῆς *ἑταιρίας* δὲ τούτων τοὺς φίλους *ἔσκ...*), although the interpretation of the passage is very doubtful. The translation of Koerte (*Hermes* XLVII. p. 298), "von ihrem Klub," has little to support it. The context suggests a possible play upon *ἑταιρήσις*, somewhat similar to that in the Andocides passage.

<sup>2</sup>Ar. *Cons. Ath.* 20. 1, 34. 3; *Pol.* 1305 b 30 ff., 1313 a 41; *Rhet. ad Alex.* 1446 b 24; Dem. 21. 139; [58. 42]; Hdt. 5. 71; Isaeus *fr.* 22. 2 (Scheibe ed. 1899); Plato, *Theaet.* 173D; *Rep.* 365D; Isoc. 3. 54; 4. 79; 16.6; Plut. *Arist.* 2; *Per.* 14.2; *Mor.* 186A. The name was applied to political clubs of other cities than Athens, as will be seen from some of the examples cited (cf. also Xen. *Hell.* 5. 2. 25; Plut. *Lys.* 13. 3-4, 21). Plutarch uses the word of the clubs which made up the Pythagorean league (*Mor.* 583A). In some cases, the distinction between "club" and "party" is not closely observed, and *ἑταιρεία* seems to be used of the "political following" of a prominent man (cf. *Lys.* 12. 55; Plut. *Pelop.* 5; *Hell. Oxy.* (Ed. Oxon.) 12. 2; Diod. Sic. 15. 82). In these cases, however, the reference is usually to a definite following, of which the nucleus may well have been a "club."

<sup>3</sup>Hyperides 3. 8 (col. 23); Plut. *Lys.* 5.

<sup>4</sup>Thuc. 8. 48-49.

<sup>5</sup>Thuc. 3. 82. 6.

<sup>6</sup>Thuc. 6. 27, 60. 1, 61; 8. 48-49; Plut. *Alc.* 18; *Ages.* 32; cf. also Plut. *Cato* 22, etc.; Dittenberger *Syl. I. G.* 461-63.

<sup>7</sup>Thuc. 8. 54. 4, 81. 2; Plato *Rep.* 365D; *Apol.* 36B; Aristoph. *Knights* 476 (cf. *infra* p. 8. n. 7).

<sup>8</sup>Photius, s. v. *συνωμοσία*.

Other words and expressions, which ordinarily possess no political significance, are at times used of the clubs.<sup>1</sup>

A tendency is noted in the authors of the classic period, and particularly in the orators, to associate particular clubs with individual members, men of predominant influence or closely concerned in the matter under discussion, whose names afforded a convenient and sufficient mode of reference. Not infrequently the more usual appellations were replaced by *οἱ περὶ τινα ἑταῖροι*. For example, the club of Midias is referred to by Demosthenes as *οἱ περὶ αὐτὸν ἑταῖροι*.<sup>2</sup> This full expression was generally abbreviated to *οἱ περὶ*, *οἱ μετὰ*, *οἱ ἀμφὶ τινα*. These phrases are oftentimes used of clubs as well as of close political followings which, while they may or may not have been regularly organized hetaeries, pursued the same objects and accomplished similar results.<sup>3</sup>

In the sense of "political club," *ἑταιρεία* and *συνωμοσία* appear to be synonymous, and no distinction can be attempted profitably.<sup>4</sup>

#### TERMINOLOGY OF THE OLIGARCHIC REVOLUTIONS

After the revolution of 411, which had been organized and directed by the clubs, *ἑταῖρος* often bore the added implication of "oligarch," and was employed without any qualifying attribute to designate the member, not merely of a political club or hetaery, but of an oligarchic club, a "clubbist." The beginnings of this usage are to be seen in Thucydides' account of the revolution. He first tells us that the promoters of the movement organized into a conspiracy those of the army at Samos who were

<sup>1</sup>Cf. Thuc. 8. 66. 2-3: τὸ ξυνεστηκός; Isoc. 3. 54: σύστασις, which is less precise than *ἑταιρεία* or *συνωμοσία*, and may refer to any combination, often in an invidious way (Dem. 57. 62; cf. 63), or may simply mean conspiracy (cf. Dem. 18. 297; Plut. *Pyrrh.* 23); Thuc. 3. 82. 6: ξύνοδος [used of *ἑταιρείαι*]; cf. Isoc. 3. 54; Solon. 2. 22=Dem. 19. 255; σύνοδος may be used of the actual meeting of a club (cf. Aristoph. *Knights* 477; Plato *Theat.* 173D; And. 1. 47).

<sup>2</sup>Dem. 21. 20; cf. 21. 139; Plut. *Per.* 16.

<sup>3</sup>Ar. *Cons. Ath.*, *fr. pr. part. dep.* 9 (ed. Blass); Dem. 39. 18; 57. 59, 60; [58. 7]; 37. 39; Xen. *Hell.* 1. 7. 8; Plut. *Alc.* 19; [Plat.] *Axiochus* 368E; Plut. *Nic.* 11.

<sup>4</sup>Cf. Plato *Rep.* 365D; see Gilbert *Beiträge* p. 84; Starkie, note to Aristoph. *Wasps* 488.

"suitable," οἱ ἐπιτήδαιοι.<sup>1</sup> But immediately afterwards he refers to those who made up the conspiracy as τὸ ἐταιρικόν,<sup>2</sup> and οἱ ἑταῖροι.<sup>3</sup> This is explained when he states, in describing the extension of the conspiracy to Athens, that its membership was recruited from the political clubs.<sup>4</sup> In the course of his account, he twice again refers to the oligarchs as ἑταῖροι, "clubbists," without any qualifying word.<sup>5</sup> Another instance of this use is preserved in the title to one of the lost speeches of Andocides, the address Πρὸς τοὺς ἑταίρους.<sup>6</sup>

The conspirators of 411 seem originally to have styled themselves ἑταῖροι merely because they were members of clubs. Ἐταῖρος at that time probably carried no suggestion of "oligarch."<sup>7</sup> Afterward, by reason of the part played by the clubs in the revolution, the word became associated with the oligarchic faction, and became a recognized part of their party terminology. This is clearly seen when Lysias refers to those who were con-

<sup>1</sup>8. 48. 2.

<sup>2</sup>8. 48. 3.

<sup>3</sup>8. 48. 4.

<sup>4</sup>8. 54. 4.

<sup>5</sup>8. 65. 2, 92. 4.

<sup>6</sup>*Fr. or.* 2=Plut. *Them.* 32. Ruhnken (*Opusc.* I. p. 326) and Sauppe (*O. A.* II. p. 165) attributed this *Address to the Clubbists* to the revolution of 411; Kirchhoff ("Andocidea" *Hermes* I. pp. 1 ff.) believes that it was identical with the συμβουλευτικός and dates it c. 420-418 (cf. Jebb I. pp. 136-37; Blass I. pp. 297 ff.; Busolt III. p. 606.n.3). There is no doubt that Plutarch understood ἑταίρους here to mean "oligarchs;" cf. παροξύνων τοὺς ὀλιγαρχικούς. On democratic clubs, cf. *infra* pp. 17 ff.

<sup>7</sup>The constant insinuations regarding oligarchic intrigues which Aristophanes puts in the mouth of Cleon in the *Knights* and of Philocleon and the dicasts in the *Wasps* do not once contain the word ἑταῖρος; the clubmen are always referred to as συνωμόται (*Knights* 257, 452, 628, 862; *Wasps* 345, 483, 488, 507; cf. 953), and the clubs are called συνωμοσταί (*Knights* 476). The reason for this is clear. Συνωμότης had exactly the connotation which Aristophanes sought, while ἑταῖρος did not at this time (424/422) carry the suggestion of "oligarch" which was attached to it after 411. It is worthy of note that συνωμότης is not found in Aristophanes except in the *Knights* and the *Wasps*, where it constantly recurs, and that these two plays were produced within two years of one another. Probably the word was used at this time by Cleon and the other popular leaders as a catchphrase in their denunciations of the oligarchic clubs (cf. *infra* p. 144. n. 4), and had an extensive vogue in the political slang of the day. It was eagerly seized upon by Aristophanes and made a conspicuous feature of his caricature. The application of συνωμότης to the members of the hetaerics must have originated with their political opponents; on the other hand it is likely that they themselves first employed ἑταῖρος.



cerned in the oligarchic conspiracy of 404 as οἱ καλούμενοι ἑταῖροι, the "so-called," or "self-styled" associates.<sup>1</sup>

It was to be expected that the suggestion which was thus attached to ἑταῖρος should extend itself, though possibly in less degree, to ἑταιρεία, and there are indications that this was the case. In the speech *On the Mysteries*, Andocides uses the word, alluding to an insinuation of his opponent, with this suggestion.<sup>2</sup> In the *Constitution of Athens*, Aristotle distinguishes two wings of the aristocratic party, the oligarchs, οἱ μὲν ἐν ταῖς ἑταιρείαις ὄντες, and the moderates, οἱ δ' ἐν ἑταιρεία μὲν οὐδεμιᾷ συγκαθεστῶτες.<sup>3</sup>

<sup>1</sup>12. 43. The employment of καλούμενος to indicate a reservation in the use of a word needs no comment; it was used, as here, in quoting party terminology, e. g. Plut. *Per.* 11: τοὺς καλοὺς κάγαθοὺς καλούμενους ἄνδρας.

<sup>2</sup>1. 100 (cf. *supra* p. 6. n. 1).

<sup>3</sup>34. 3. Cf. *infra* pp. 21-22.

## CHAPTER II

## THE ORIGIN AND STATUS OF THE CLUBS

## ORIGIN AND DEVELOPMENT

No explanation of the origin of these clubs, *ἑταιρείαι* or *συνωμοσίαι*, is found in ancient literature, and there is no evidence that it was ever attempted.<sup>1</sup> The earlier Attic prose writers refer to them as to a fully developed institution, an important and universally recognized feature of Greek, and particularly of Athenian, political and social life. Under these circumstances, any attempt to reconstruct the history of their origin and early development must be largely speculative, and the utmost that can be claimed for any theory which may be formulated is that it is a reasonable and justifiable inference from the known facts.

Vischer regards the clubs as organized for definite political purposes, both in Athens and elsewhere. After the expulsion of the tyrants in various states by the Spartans, there was in each state an element which the new political order did not satisfy: "Solche Unzufriedene vereinigten sich nun mit Gleichgesinnten zu engeren Genossenschaften, sich mit Rath und That im politischen Leben zu unterstützen, und auch Männer, die nicht mit dem politischen Zustande unzufrieden waren, aber sich persönlich geltend zu machen strebten, folgten oft ihrem Beispiele."<sup>2</sup> The appearance of the clubs at Athens he puts after the expulsion of Isagoras: "Und da das (the overthrow of the democracy by foreign aid) nicht mehr offen wie unter Isagoras geschehen konnte, so nahmen diejenigen, welche sich durchaus nicht mit der neuen Ordnung versöhnen konnten, ihre Zuflucht zu geheimen Verbindungen und Umtrieben, welche Anfangs ohne feste Organisation, am Ende des peloponnesischen Krieges nach einem zusammenhängenden Plane Athen und die Bundesstädte umgarneten und in der Herrschaft der Dreissig ihren kurzen aber

<sup>1</sup>See Busolt III. p. 822. n. 1: "Ueber die Anfänge der Hetairieen fehlt es an Nachrichten."

<sup>2</sup>Pp. 155 ff.

blutigen Triumph feierten. Dadurch erhält ihr ganzes Wesen den Charakter des Volksfeindlichen und Verrätherischen."<sup>1</sup> In the time of the Persian war, Vischer finds traces of clubs (mentioned by Isocrates *Panegy.* 79), and the first definite instance is the club of Themistocles. On the eve of the battle of Plataea, he finds mention of what he terms "eine wirkliche Verschwörung."<sup>2</sup> Vischer's theory, then, in so far as it has to do with the clubs at Athens, seems to imply that they were organized by the remnant of the Isagorean party for particular political ends. This was not the case, as I shall endeavor to show. The oligarchic party did not organize clubs to resist the democracy which Clisthenes founded, but merely adapted to the changed conditions an institution of great antiquity which had long before played an important part in the struggles between the rival aristocratic factions.

The existence of the clubs in Athens at an earlier date than that suggested by Vischer is now conclusively established by Aristotle's account of the contention between Clisthenes and Isagoras for the archonship during the time which preceded the expulsion of the latter from Athens: *καταλυθείσης δὲ τῆς τυραννίδος, ἐστασίαζον πρὸς ἀλλήλους Ἰσαγόρας ὁ Τεισάνδρου φίλος ὢν τῶν τυράννων, καὶ Κλεισθένης τοῦ γένους ὢν τῶν Ἀλκμεωνιδῶν. ἡττώμενος δὲ ταῖς ἐταιρείαις ὁ Κλεισθένης προσηγάγετο τὸν δῆμον, κτλ.*<sup>3</sup> Let us consider briefly the history of this period. Clisthenes headed the aristocratic faction to which the Alcmeonids belonged; his opponent Isagoras numbered among his supporters the remnant of the Pisistratidean party, by no means inconsiderable.<sup>4</sup> Isagoras was successful, and was elected archon for the year 508/7.<sup>5</sup> It was then that Clisthenes, by advocating a change to more democratic forms of government, obtained the support of the great mass of the people and consequently a preponderance of physical force which Isagoras and his party could meet in but

<sup>1</sup>P. 159.

<sup>2</sup>P. 161; cf. *infra* p. 143.

<sup>3</sup>*Cons. Ath.* 20. 1.

<sup>4</sup>Although Isagoras seems not to have been a partisan of the tyrants, those of the Pisistratidean party who remained in the city (*Ar. Cons. Ath.* 22. 4) supported him in preference to Clisthenes, the avowed foe of the Pisistratids (*Ar. Cons. Ath.* 20. 1; cf. Busolt II. p. 401.n.2).

<sup>5</sup>*Ar. Cons. Ath.* 21. 1-2; cf. Busolt II. p. 402. n. 1.

one way, by appeal to Sparta.<sup>1</sup> The actual institution of the promised reforms probably took place after the expulsion of Isagoras and the Spartan forces.<sup>2</sup> The essential fact to be noted is that the overtures made by Clisthenes to the commons were subsequent to his defeat by Isagoras for the archonship. The conflict alluded to by Aristotle, then, was not between these aristocratic clubs on the one side and the commons on the other, but between the clubs which were supporting Clisthenes and those which took the part of Isagoras, and the expression used by Aristotle (*ἡττώμενος δὲ ταῖς ἐταιρείαις*) refers to an inter-club struggle in which the party of Clisthenes proved to be the weaker.<sup>3</sup> The situation described is not unlike that which existed nearly a hundred years later, when in 411 the moderate wing of the oligarchs, finding themselves the minority in the combination of clubs which was in power, espoused the cause, nominally of the "Five Thousand," in reality of the democracy.<sup>4</sup> It is not impossible that Clisthenes, like Theramenes and his adherents, heard the distant muttering of the storm, and was far-sighted enough to see that democracy was destined to prevail.

Aristotle's account, then, shows conclusively that the clubs were not first organized by the oligarchs after the expulsion of Isagoras as a means of secretly resisting the encroachments of the newly established democracy. They had already existed under the old aristocracy and had doubtless played their part in the struggles between the factions of the Hill, the Coast, and the Plain.<sup>5</sup>

Another important fact which the Aristotelian account establishes is that the remaining adherents of the Pisistratids were at this time organized into hetaeries, which constituted so considerable a proportion of the clubs that they were able to turn

<sup>1</sup>Ar. *Cons. Ath.* 20; Hdt. 5. 66, 69-70; cf. Busolt II. pp. 402 ff.

<sup>2</sup>Sandys (note to Ar. *Cons. Ath.* 21. 1). Busolt (II. pp. 402 ff.) believes that the reforms were begun before the expulsion of Isagoras, and completed afterwards.

<sup>3</sup>The passage is correctly translated by Kenyon (p. 35).

<sup>4</sup>Thuc. 8. 89 ff.

<sup>5</sup>Headlam (pp. 33-34) recognizes the identity of these *ἐταιρείαι* with the clubs of Thucydides, as does Gilbert (*Cons. Ant.* pp. 141, 142. n. 1, 146. n. 1). The latter, however, fails clearly to distinguish them from the larger factions or parties which they composed.



the scale in favor of Isagoras against the strong faction of the Alcmeonids.<sup>1</sup> As the short time which had elapsed since the fall of the tyranny could not have sufficed for any material change in the organization of the Pisistratidean party, it is clear that these clubs were part of the system by which Pisistratus and his sons were enabled to maintain their authority against attacks from within. This confirms the view advanced by Büttner,<sup>2</sup> who inferred that Pisistratus and his successors belonged to clubs from the fact that *ἐταῖροι* of the tyrants are mentioned.<sup>3</sup>

The statement of Herodotus that the friends who were associated with Cylon in his attempts to establish a tyranny constituted a hetaery, can no longer be passed over as the projection of the term *ἐταιρεία* back into a period of history which antedates the clubs.<sup>4</sup> In the light of the information contained in Aristotle, it at once assumes great importance as the first appearance of a club in Athenian politics. The account of Herodotus is as follows: οὗτος (Cylon) ἐπὶ τυραννίδι ἐκόμησε, προσποιησάμενος δὲ ἐταιρητὴν τῶν ἡλικιωτέρων καταλαβεῖν τὴν ἀκρόπολιν ἐπειρήθη, κτλ.<sup>5</sup> The reference is clearly not to the entire following of Cylon, which was very considerable,<sup>6</sup> but to the comparatively small body of close friends and age-fellows constituting his club, who attached themselves to his person and aided him in supervising and directing the *coup d'état*.<sup>7</sup>

<sup>1</sup>The strength of the Clisthenic faction is shown by the fact that Isagoras deemed it necessary to expel no fewer than seven hundred families (*Ar. Cons. Ath.* 20. 3).

<sup>2</sup>P. 13.

<sup>3</sup>Aristoph. *Lysis*. 1153.

<sup>4</sup>It should be noted that Herodotus uses *στάσις*, the most usual term for "party" or "faction," where the reference is to the larger divisions, or factions, of which the clubs were parts; for example I. 59.

<sup>5</sup>5. 71.

<sup>6</sup>Not only is this expressly stated by Plutarch (*Solon* 12), but it may be inferred from the success of the measures directed against Megacles and those who were implicated in the violation of sanctuary (cf. Grote *History of Greece* II. pp. 454-55; Busolt II. p. 208).

<sup>7</sup>Cf. Busolt I. p. 670. n. 10: "Er bildete eine Hetairie von 'Leuten seines Alters.'" It is unreasonable to suppose that the Cylonian faction was limited to this club of Cylon's age-fellows, which could have been but the nucleus of the party. The associates of Cylon are referred to as τοὺς συνωμότας τοῦ Κ. (*Plut. Solon* 12); φίλους (*Thuc.* I. 126. 5); τοὺς μετὰ Κύλωνος (*Ar. Cons. Ath.*, *fr. pr. part. dep.* 9 [ed. Blass], where οἱ περὶ Μεγακλέα equals Μεγακλῆς καὶ οἱ συνάρχοντες of *Plut. Solon* 12). Cf. Büttner on this club (p. 7), and *infra* pp. 27, 30, 142.

Here, in the earliest period of authentic Athenian history, is found a club, composed of a comparatively small number of friends and age-fellows, attached to a leader of wealth and social standing by ties of personal friendship, and ready to follow the fortunes of that leader into the political field and even to meet death in the support of his cause. The hetaery is evidently an institution of the greatest antiquity, and it will be worth while to seek further back for traces of its origin. In the club of Cylon we have the hetaery under the aristocracy which succeeded the primitive kingship. The next step will be to seek for traces of such an institution under the kingship, and to examine the status of the Homeric *ἑταῖροι*.

Finsler, in his study of the Homeric kingship,<sup>1</sup> has thrown a new light upon the meaning of the word *ἑταῖρος* in Homer, and has established a number of facts which are of the utmost importance for the precise understanding of the relationship which the word denotes. He finds that *ἑταῖρος* everywhere involves the fundamental idea of "eines festen Verhältnisses," and that the application of the word to the soldiery of the leaders is "eine Erweiterung des ursprünglichen Begriffes, der wohl eine Gesellschaft Gleichstehender, vielleicht Gleichalteriger umfasste."<sup>2</sup> Of the relationship of *ἑταῖρος* among Achilles and his comrades, he says: "Es ist ein fester Verband, den diese Adeligen bilden, dem der Führer selbst angehört, und der offenbar nicht erst für den Feldzug zusammentrat, sondern schon in der Heimat bestand." This same relationship he finds among the nobles of Troy and between Odysseus and certain of his friends in the *Odyssey*, involving the idea of equality in age, and he concludes "dass es in Ithaka wie in Troia und Phthia Adelsverbände gab, die gemeinsame Mahlzeiten abhielten und sich zunächst aus Altersgenossen zusammensetzten. Ob sie zu Kriegszwecken gebildet waren, steht dahin; jedenfalls hielten sie im Kriege zusammen."<sup>3</sup> That these *ἑταῖροι* were accustomed to dine together and defray

<sup>1</sup>"Das homerische Königtum" *Neue Jahrbücher* XVII. (1906) pp. 313 ff. The groups of Homeric *ἑταῖροι*, as sketched by Finsler, show striking similarity to the hetaeries of historic times in a number of important details, e. g., the social features (*infra* pp. 24 ff.), and the equality of age and social position of the *ἑταῖροι* (*infra* pp. 27 ff.). This is a strong testimonial to the soundness of Finsler's conclusions.

<sup>2</sup>P. 314.

<sup>3</sup>P. 315.

the cost of the banquet in common, Finsler infers from a number of passages in which these meals of the nobility are mentioned, especially *Iliad* 4. 257 ff., and he concludes "Abschliessend können wir sagen, dass in der Ilias zwei Arten von Gastmählern des Adels hervortreten: Einladungen des Königs und Mahlzeiten der *ἐταῖροι* auf gemeinsame Kosten."<sup>1</sup>

Among the facts established by Finsler's investigation, it should be particularly noted, first, that *ἐταῖρος* in its original meaning refers to a close relationship between members of the Homeric nobility; second, that this relationship involved equality of age; third, that the *ἐταῖροι* held banquets. In the club of Cylon are found two of these characteristics; its members were noble<sup>2</sup> and of the same age. On the third point, our meagre accounts give no information. We have then in the bands of Homeric *ἐταῖροι* the prototypes of Cylon's club, the first hetaery to appear in authentic Athenian history. It remains briefly to glance at the course of development, extending through the changing periods of Athenian constitutional history, by which these primitive groups evolved into the clubs which flourished under the democracy, the *συνωμοσῖαι ἐπὶ δίκαις καὶ ἀρχαῖς* of Thucydides.

In the earliest times, the little settlements which were scattered throughout Attica were ruled by the primitive kings or chieftains, as we see them in Homer, whose respective power and prestige corresponded roughly to the number and rank of the *ἐταῖροι* who sat at their boards, followed their leadership in war, and acknowledged their authority in time of peace.<sup>3</sup> After the

<sup>1</sup>P. 318.

<sup>2</sup>Cf. *infra* p. 27. n. 4.

<sup>3</sup>The *ἐταῖροι* of the kings and tyrants of the fifth and fourth centuries and of the rulers of such large states as Macedon cannot of course strictly be compared with the *ἐταῖροι* of the Homeric chieftains, although they are undoubtedly a survival of the ancient institution (see Bury *History of Greece* pp. 71 ff.). But a number of interesting analogies may be noted. The *ἐταῖροι* of the Macedonian kings were feasted in the palace (Spitta *De amicorum qui vocantur in Macedonum regno condicione* [Berlin: 1875] pp. 9 ff.); many if not all of them followed the kings in battle (*loc. cit.*); they were at times consulted on affairs of state (p. 38). In the treaty of alliance between the people of Erythrae and Hermias, the tyrant of Atarneus, about the middle of the fourth century, the tyrant is not mentioned alone, but as *Ἐρμίας καὶ οἱ ἐταῖροι*, except in the unimportant matter of seeing that the stele bearing the inscription is properly set up at Atarneus; the treaty is said to be between the Erythraeans and *Ἐρμίας καὶ οἱ ἐταῖροι*, and the territory of

unification of Attica, these patriarchal rulers and the families of which they were the heads constituted the aristocracy, who shared in the kingly power in much the same way in which we may believe their own *ἐταῖροι* had shared in the more primitive community government.<sup>1</sup> By a gradual process, extending over a considerable period of time, this powerful class appropriated to itself the kingly functions, and the state became a formal instead of merely a virtual aristocracy.<sup>2</sup> The new condition engendered rivalry of a more pronounced nature between the great families of the nobility, a rivalry which made doubly important the possession of *ἐταῖροι*, and which finally developed into the bitter factional strife, already seen in the Cylonian episode,<sup>3</sup> that is the distinctive feature of sixth century Athenian history.<sup>4</sup> Here we have what may roughly be called the second stage in the development of the clubs, their activity under the aristocracy, as it is seen in the clubs of Cylon, of the Pisistratids, and those which made up the factions of Isagoras and Clisthenes.<sup>5</sup>

With the institution of the democracy came a complete change in the conditions of political endeavor, for the sovereign power now rested with the masses. The aristocratic clubs were not, however, discarded by their leaders, but were adapted to the new regime. They became means for influencing the demos at elections and in the law courts. Their efficiency as a means of obtaining office is established, apart from the specific cases which will be studied later,<sup>6</sup> by the predominance of notable names in the lists of archons and generals, before the former office came to be filled by lot and the latter to be quite overshadowed by the growing power of the orators; and by the fact, pointed out by

Atarneus is called *τὴν χώραν τὴν Ἐρμίου καὶ τῶν ἐταίρων* (Dittenberger 122; Michel 12; Hicks 138). Cf. also the statement of Aristotle (*Pol.* 1287 b 30) with Newman's note.

<sup>1</sup>Cf. Gilbert *Cons. Ant.* p. 102, with the passages cited in n. 3; Whibley *Greek Oligarchies* pp. 90-94. n. 21; Busolt II. pp. 93 ff.

<sup>2</sup>Cf. Gilbert *Cons. Ant.* pp. 110-15, with passages cited; Busolt II. pp. 128 ff.

<sup>3</sup>Cf. Busolt II. p. 208.

<sup>4</sup>Cf. Gilbert *Cons. Ant.* pp. 141 ff.

<sup>5</sup>The establishment of oligarchies in which the offices were filled from *ἐταιρείαι*, as in Abydos (*Ar. Pol.* 1305 b 30 ff.), may have been an attempt to imitate these conditions.

<sup>6</sup>Cf. *infra* pp. 126 ff.



Haussoullier,<sup>1</sup> that the deme offices even as late as the time of Demosthenes were filled almost entirely from noble and influential families. The activity in litigation was naturally the last to develop, and assumed importance proportionally as the power and prestige of the popular courts increased and the use of litigation as a political weapon became prevalent.<sup>2</sup>

The facts of the organization and political status of the clubs, as known to us from the sources, may now be examined, in order to note how far they are in harmony with the theory which has been advanced.

#### POLITICAL TENDENCIES

Vischer's theory that the hetaerics were organized by the remnant of the Isagorean party as a means of secretly resisting the democracy places him under the necessity of regarding them as essentially oligarchic and treasonable,<sup>3</sup> and leads him practically to ignore that portion of their activities, by no means slight, which was entirely fair and legitimate. He is accordingly constrained to explain the clubs of the popular leaders as exceptions, since they will not fit into his scheme.<sup>4</sup> These difficulties, which are inherent in his theory, will be seen to vanish when the political tendencies of the clubs under the democracy are studied with reference to their earlier history.

<sup>1</sup>*La vie municipale en Attique* (Paris: 1884) pp. 60 ff., cf. *infra* pp. 130-31.

<sup>2</sup>Cf. *infra* pp. 98 ff.

<sup>3</sup>P. 159: "Dadurch erhält ihr ganzes Wesen den Charakter des Volksfeindlichen und Verrätherischen." Elsewhere (p. 156) he says: "Meist haben sie oligarchische Tendenz, wiewohl das nicht absolut nothwendig ist; denn auch die Demokraten können sich in Hetairien verbünden und haben es gethan," but here he is speaking of Greece in general, and not of Athens particularly.

<sup>4</sup>Of Themistocles' club, Vischer says (p. 161): "Der Zweck dieser Verbindung war aber durchaus nur die Macht des Themistokles, und insofern diese auf Athens Grösse und Freiheit beruhte, untadelhaft." Pericles, he thinks (pp. 163-64), made use of his club only long enough to break up the opposing clubs of Cimon and Thucydides, and he explains its character as follows: "Sie trägt aber wie die gleich zu erwähnende des Thukydidens und die des Themistokles einen gesetzlichen Charakter, soweit er bei solchen Verbindungen überhaupt möglich ist." Alcibiades he regards (pp. 173-74) as an opportunist with no firm political convictions, whose club affiliations were only a means of forwarding his personal ambitions, and he concludes "dass diese Hetairien keineswegs immer sich gleich blieben, sondern nach Zeit und Verhältnissen ihre Mitglieder wechselten." (p. 175).

Aristotle's account<sup>1</sup> of the factional struggles which immediately preceded the establishment of the democracy exhibits the clubs as the dominant element in the old aristocracy, roughly grouped under the two rival leaders, Isagoras and Clisthenes. After the final defeat of Isagoras and the triumph of the new popular party, the clubs which had made up his faction became the party of the opposition. Those whose antipathy toward a popular form of government was most intense adopted the policy which became characteristic of the extreme oligarchs, and embarked upon the bitter struggle with the ascendant democracy which Vischer has described. On the other hand there were the clubs which had sided with Clisthenes, constituting a body of no mean strength.<sup>2</sup> We must believe that many of these followed their leader in espousing the popular cause,<sup>3</sup> for it is highly improbable that either Clisthenes or the other influential men of his party would discard the hetaeries to which they owed much of their strength, or that the necessity for such organizations would vanish with the change of government. The presence in the new democratic party of this aristocratic element, already organized into clubs, accounts for the existence of hetaeries which supported popular leaders of the fifth century, Themistocles,<sup>4</sup> Pericles,<sup>5</sup> Alcibiades.<sup>6</sup>

<sup>1</sup>*Cons. Ath.* 20; cf. *supra* pp. 11-12.

<sup>2</sup>*Supra* p. 13. n. 1.

<sup>3</sup>Vischer himself concludes (p. 159): "Die edleren unter diesen (the old aristocracy), und zwar in grosser Zahl, sich bald gänzlich der Demokratie anschliessen, bald eine ehrliche und offene Opposition bilden."

<sup>4</sup>For the club of Themistocles, cf. *Plut. Arist.* 2: ὁ μὲν οὖν Θεμιστοκλῆς εἰς ἑταιρείαν ἐμβαλὼν ἑαυτὸν εἶχε πρόβλημα καὶ δύναμιν οὐκ ἐγκαταφρόνητος, κτλ. On the statement which follows regarding his attitude toward his ἑταῖροι, cf. *Plut. Reip. Ger.* 807AB. Vischer (p. 161) believes that Epicrates of Acharnae, mentioned by Plutarch (*Them.* 24), was a ἑταῖρος of Themistocles, and Büttner (p. 24) includes also the friends mentioned by Thucydides (1. 137). From Plutarch (*Them.* 3) we learn that Themistocles was in his youth a member of a convivial club (cf. *infra* p. 25). See also Busolt II. p. 641.

<sup>5</sup>For the club of Pericles, cf. especially *Plut. Per.* 16: Πεισιστρατίδας μὲν νέους τοὺς περὶ αὐτὸν ἑταίρους καλοῦντες, κτλ.; *Per.* 7: τὰλλα δὲ φίλοι καὶ ῥήτορας ἑταίρους καθιέεις ἔπραττεν. (ἑταίρους is the reading of the manuscripts. It was emended by Geel to ἐτέρους, probably through a failure to note the adjectival use of ἑταῖρος; cf. *Plato Gorg.* 487D; *Phaed.* 89D, where we have a superlative ἑταιρότατος); *Plut. Reip. Ger.* 811C-F. See Vischer pp. 163-64; Büttner p. 38; *infra* pp. 119-20.

<sup>6</sup>For the club of Alcibiades, cf. especially *Isoc.* 16. 6: συνάγοι τὴν ἑταιρείαν, κτλ.; *Plut. Alc.* 22, 4, 8; *And.* 1. 12; cf. [*And.*] 4. 4, 14. Vischer rightly regards the παρακλειστοί of *Thuc.* 6. 13 as ἑταῖροι of Alcibiades. The words τοῖς πρεσβυτέροις show clearly that Nicias is referring to

It is worthy of note that two of these leaders were not only of noble birth, but were even closely allied to the family of Clisthenes. However, there were undoubtedly many clubs which, although they did not entertain the bitter hatred of democracy that characterized the extreme oligarchs, yet were not disposed to follow the example of Clisthenes and attach themselves to the new democracy; hence the existence of hetaeries in the moderate party. Already as early as 457 we see the club of Cimon refusing to act with those of the extreme oligarchs in their attempted treason.<sup>1</sup> The club of Thucydides, as Vischer himself admits, cannot be identified with the extreme party,<sup>2</sup> and that of Nicias was undoubtedly moderate in its views.<sup>3</sup> Thus it appears from Vischer's account that clubs existed among the moderates during the greater part of the fifth century. In the revolutionary period, however, it becomes more difficult to trace them, as might be expected of a time when, in the words of Whibley, "the middle party had neither a distinct policy of its own, nor indeed a separate existence, as its members attached themselves to one of the other

*young παρακλειυστοί, the νεώτεροι, who would not constitute the entire party which was supporting Alcibiades. They were the young men of his club and perhaps other clubs of a similar character. See Vischer pp. 173 ff.; Büttner 59 ff.; infra pp. 25, 116, 120, 121-22.*

<sup>1</sup>Cf. *infra* p. 144. Busolt (III. p. 314) says: "Die Lakonerfreundschaft und das Parteiinteresse Kimons und seiner Hetairie ging nicht so weit, wie die anderer oligarchischer Hetairien, welche mit dem Feinde konspirierten und wohl dessen Sieg wünschten." For the club of Cimon, cf. also Plut. *Cim.* 17: *Εὐθιπποῦ τοῦ Ἀναφλυστίου καὶ τῶν ἄλλων ἑταίρων*; see Vischer p. 162; *infra* pp. 30, 137, 144.

<sup>2</sup>Cf. Vischer p. 167: "Seine Hetairie erscheint darum nur als eine kompakte, wohl organisirte Opposition, welche aber die Ehre und die Wohlfahrt des Vaterlandes über den eigenen Vortheil stellte." In his account of the club of Thucydides (pp. 166 ff.), Vischer confuses the club, composed of the close adherents of the party leader (Plut. *Per.* 14: *τῶν δὲ περὶ τὸν Θουκυδίδην ῥητόρων, κτλ.; τὴν ἀντιτεταγμένην ἑταιρείαν*) with the larger party organization, first introduced by Thucydides, which included all of the aristocratic faction, and which Plutarch does not call a *ἑταιρεία* (*Per.* 11).

<sup>3</sup>Vischer rightly concludes (p. 170) that the politicians referred to as *ἑταῖροι* and *φίλοι* of Nicias constituted a hetaery. However, he attaches too much importance to the passages in which the comic poets make sport of Nicias' superstition by calling his friends "soothsayers" and "oraclemongers." Diopithes (*Schol.* to Aristoph. *Knights* 1085: *ἦν δὲ καὶ Νικίου ἑταῖρος*; to *Birds* 988: *Διοπίθης ὁ ῥήτωρ*), and Hieron (Plut. *Nic.* 5: *λόγους ἐξέφερον εἰς τὸν δῆμον*), at least, were practical politicians, whatever may have been their penchant for "soothsaying." And it must be remembered that the most prominent men at Athens did not hesitate to be governed by oracles and omens (Xen. *Mem.* 1. 1. 7-8).

two parties."<sup>1</sup> It is clear that at the time of the first oligarchic revolution there were many clubs of moderate political views, since the moderates constituted a very considerable proportion of the great revolutionary organization,<sup>2</sup> and this, as Thucydides distinctly states, was made up from the membership of the clubs, both at Samos and in Athens.<sup>3</sup> Had this not been the case, it would have been unnecessary for Pisander so urgently to exhort the clubs to unite and work together,<sup>4</sup> for the clubs of the extreme oligarchs seem to have kept up communication with one another and to have followed out a consistent policy.<sup>5</sup> And the lines of the *Lysistrata* in which Aristophanes describes the clubs and their harmful influence in the state in the very year of the revolution put the matter almost beyond doubt:

πρῶτον μὲν ἐχρῆν, ὥσπερ πόκου, ἐν βαλανείῳ  
ἐκπλύναντας τὴν οἰσπώτην, ἐκ τῆς πόλεως ἐπὶ κλίνης  
ἐκραβδίξειν τοὺς μοχθηροὺς καὶ τοὺς τριβόλους ἀπολέξαι,  
καὶ τοὺς γε συνισταμένους τούτους καὶ τοὺς πιλοῦντας ἑαυτοὺς  
ἐπὶ ταῖς ἀρχαῖσι διαξῆναι καὶ τὰς κεφαλὰς ἀποτίλαι.<sup>6</sup>

Here is no reference to clubs of any particular party, least of all to secret and stealthy conspiracies of the extreme oligarchs, but to all the organizations, both numerous and powerful, which controlled Athenian politics, and did so not merely by furtive plotting but through the normal avenues of political activity,

<sup>1</sup>*Pol. Parties* p. 94. On the mixture of parties at this time, cf. Lysias 25. 9.

<sup>2</sup>Whibley (*op. cit.* p. 95) says: "Many men, indeed, who usually acted with this (the middle) party, desired to see a moderate oligarchy established, and the revolutions of 411 and 404 were both carried out with their help. They did not, however, take sufficient precautions to prevent oppression and secure moderation, and on both occasions they broke from the oligarchs when they saw the character of their government." See also Busolt III. pp. 1459, 1462 ff.; Micheli *La révolution oligarchique des quatre-cents à Athènes* (Geneva: 1893) pp. 5. n. 1, 105-106.

<sup>3</sup>Thuc. 8. 48. 3: τοῦ ἐταιρικοῦ τῷ πλεονί; Thuc. 8. 54. 4; Goodhart's notes *ad loc.*

<sup>4</sup>Thuc. 8. 54. 4.

<sup>5</sup>Cf. Whibley *op. cit.* pp. 84-85: "It is probable that these associations (the oligarchic clubs) were kept in communication with one another, and with similar clubs among the allies, by periodical meetings of their leaders to decide on the course of action demanded by circumstances."

\* \* \* "With this network of combination the oligarchs worked persistently against the constitution."

<sup>6</sup>574-78. Cf. *infra* p. 127 and the articles there cited.



elective, judicial and legislative assemblies. The "professional politician" of every party, the *μοχθηρός* as well as the *καλὸς κάγαθός*, is here aimed at. In the time of the second revolution, however, the question is complicated by the language in which Aristotle describes the parties at Athens: *οἱ μὲν δημοτικοὶ διασώζειν ἐπειρῶντο τὸν δῆμον, τῶν δὲ γνωρίμων οἱ μὲν ἐν ταῖς ἐταιρείαις ὄντες, καὶ τῶν φυγάδων οἱ μετὰ τὴν εἰρήνην κατελθόντες, ὀλιγαρχίας ἐπεθύμουν, οἱ δ' ἐν ἐταιρείᾳ μὲν οὐδεμιᾷ συγκαθεστῶτες, ἄλλως δὲ δοκοῦντες οὐδενὸς ἐπιλείπεσθαι τῶν πολιτῶν, τὴν πάτριον πολιτείαν ἐζήτουν.*<sup>1</sup> The words *οἱ δ' ἐν ἐταιρείᾳ μὲν οὐδεμιᾷ συγκαθεστῶτες* would seem at first glance to constitute a sweeping assertion that the moderates had no club affiliations at this time, which appears incredible in view of the earlier history of the party. But a more careful examination of the statement suggests that this is not the meaning of the phrase. Two parties are distinguished: the democratic, which was unanimous in support of the existing constitution, and the opposition, which was divided into the extreme oligarchic and the moderate wings. Of the extreme oligarchs, not a few, who had not been included in the amnesty of Patroclides, were in exile until the surrender; those who had remained in the city had kept up a secret connection among their clubs and were already organized and prepared to strike when the time should arrive.<sup>2</sup> These it is whom Aristotle designates as *οἱ μὲν ἐν ταῖς ἐταιρείαις ὄντες*, using *αἱ ἐταιρείαι* of the clubs which were in the oligarchic conspiracy, in a sense which was perfectly familiar to Athenians after the revolution of 411, and not in the more general sense of any political club.<sup>3</sup> The phrase *οἱ δ' ἐν ἐταιρείᾳ μὲν οὐδεμιᾷ συγκαθεστῶτες* describes the moderates, not as entirely without club affiliations, but as not in the conspiracy of the oligarchic clubs, although in other respects (social standing and influence, perhaps) they were in no wise the inferiors of those who did espouse the oligarchic cause.<sup>4</sup> The reasons for this diplomatic wording of the statement

<sup>1</sup>*Cons. Ath.* 34. 3.

<sup>2</sup>Cf. *infra* p. 129. n. 2; see also Whibley *op. cit.* p. 87; Grote VI. pp. 453-54: "Probably the old faction of the Four Hundred, though put down, had never wholly died out. At any rate, the political hetaeries or clubs, out of which it was composed, still remained, prepared for fresh coöperation when a favorable moment should arrive."

<sup>3</sup>Cf. *supra* pp. 7-9.

<sup>4</sup>The word *συγκαθεστῶτες* emphasizes the reference just made to the

are not far to seek. The moderate party had been seriously compromised by the part it had taken in the two revolutions, and particularly by the activities of Theramenes in 404.<sup>1</sup> Aristotle is here following the anonymous author of the "moderate" brochure from which he drew most of the material for the historical part of his work.<sup>2</sup> And the account of the two revolutions which he took from this source is little more than an apology for the course pursued by the moderate party, as v. Mess aptly describes it, "ein Musterstück Therameneischer Publizistik."<sup>3</sup> The disingenuousness of this passage is paralleled at many points in the narrative, notably by the suppression of all reference to the clubs and terrorism in the account of the earlier revolution.<sup>4</sup>

We have seen that clubs were not restricted to any party during the great part of the fifth century, and particularly that

oligarchs and strengthens the suggestion that the moderates were not implicated in their treasonable conspiracies (*συγκαθίστημι* and *συνίστημι* are often used to convey the suggestion of plotting and conspiracy; e. g., Dem. 21. 139: *μαρτύρων συνεστῶς ἔταιρεία*; Ar. *Cons. Ath.* 25. 3; Aristoph. *Lys.* 577, with *scholia*; *Knights* 863, 476, with Neil's note; Dem. 32. 10; 18. 249; 21. 213; 22. 37; 24. 147; 25. 64; 37. 39, 48; [43. 38]; [46. 25]; 57. 13, 16, 59, 60, 63; Isoc. 18. 51; Thuc. 8. 65. 2, 66. 1, 73. 1, 2, 4.

<sup>1</sup>See v. Mess "Aristoteles 'Αθηναίων Πολιτεία und die politische Schriftstellerei Athens" *Rh. M.* LXVI. (1911) pp. 367 ff., especially p. 379: "Theramenes war durch die Einsetzung der Dreissig noch viel tiefer kompromittiert, als durch die Revolution der Vierhundert. Er hatte den Frieden mit Lysander zum Abschluss gebracht und Hand in Hand mit ihm die Einsetzung der oligarchischen Tyrannis erzwungen."

<sup>2</sup>Seeck ("Quellenstudien zu des Aristoteles Verfassungsgeschichte Athens" *Klio* IV. [1904] pp. 282 ff.) has shown that the historical portion of the *Constitution* was taken with but slight additions or changes from a party brochure written about 392 by an adherent of Theramenes. Cf. *infra* p. 115. n. 4, and see also v. Mess pp. 359 ff., 365, 366: "Was wir also in der Verfassungsgeschichte des Aristoteles vor uns haben, ist nicht Aristoteles, ist nicht die Atthis seiner Zeit mit einem Einschlag aus einer oligarchischen Parteischrift, sondern es ist eine einheitliche politisch-historische Darstellung der attischen Verfassung und ihrer Wandlungen, die den Kreisen der Therameneischen Partei entstammt."

<sup>3</sup>P. 381. See also pp. 367 ff., and on this passage (*Cons. Ath.* 34. 3) p. 380 and Seeck pp. 283 ff.

<sup>4</sup>To realize at once the strong bias of the narrative in favor of Theramenes, and the purpose it was intended to serve, it is only necessary to compare the account of the Four Hundred with Thucydides, or that of the trial of the generals and of the second revolution with Xenophon. We see at once the difference between the historian, whatever his sympathies, and the party pamphleteer. See v. Mess pp. 369 ff., esp. p. 372: "Dass er (the anonymous pamphleteer) die Vorgeschichte übergeht, lässt sich verstehen, dass er über den Terror und die Klubs schweigt, muss bereits befremden. Wie hier, so ist auch bei der ganzen Umwälzung nirgends die Rede von Gewalt und Terrorismus, um so schärfer treten die legislatorischen Akte hervor."

this was not the case in 411. And the Platonic Socrates speaks of them no later than 399 as an important feature of the political activities commonly pursued by the Athenians. He makes no distinction whatsoever of class or party, but mentions political clubs as one of the matters to which the majority of the citizens customarily give their attention.<sup>1</sup> That clubs should not have been limited to any particular party in 411 nor in 399 and yet should have been restricted to the extreme oligarchs in 404 is highly improbable, to say the least.

In the fourth century it becomes utterly impossible to trace the political tendencies of the clubs which we meet, or to identify them with any particular party. They are, however, generally associated with wealthy and influential men, and the clubs of Midias<sup>2</sup> and Eubulides<sup>3</sup> may be regarded as fairly typical. It is in this period that we first get a clear light on such clubs of sycophants and "pettifoggers" as that of Meneceles and Mnesicles, which clearly had no definite political convictions and existed for the profits which they enabled their members to make by various kinds of sharp practice in the courts.<sup>4</sup>

<sup>1</sup>*Apol.* 36B: ἀμελήσας ὥνπερ οἱ πολλοί, χρηματισμοῦ τε καὶ οἰκονομίας καὶ στρατηγῶν καὶ δημηγοριῶν καὶ τῶν ἄλλων ἀρχῶν καὶ συνωμοσιῶν καὶ στάσεων τῶν ἐν τῇ πόλει γιγνομένων, ἠγησάμενος ἑμαυτὸν τῷ ὄντι ἐπιεικέστερον εἶναι ἢ ὥστε εἰς ταῦτ' ἰόντα σώζεσθαι, κτλ.

<sup>2</sup>For the club of Midias, cf. esp. Dem. 21. 139: μαρτύρων συνεστῶσ' ἑταιρεία; *ib.* 20: τοῖς περὶ αὐτὸν ἑταίρους. In *ib.* 213, these rich ἑταίροι are referred to as πλούσιοι πολλοὶ συνεστηκότες, and Demosthenes insinuates (208 ff.) that Midias and these same men would not be unwilling to participate in an oligarchic revolution. See also Leisi *Der Zeuge im attischen Recht* (Frauenfeld: 1908) p. 119, and *infra* pp. 45-46, 51, 60-61, 64, 74, 79, 84-85, 88, 95, 129-30. Cf. Dem. 45. 67, with Sandys's note.

<sup>3</sup>On the club of Eubulides, cf. Dem. 57 *passim*, and especially 59-60; 8ff.; 63 ff. The cabal whose intrigues are described in 8 ff., and 63 ff., as well as elsewhere in the speech, was not strictly identical in membership with the club of Eubulides, but resulted from the combination of certain men whom Euxitheus had antagonized during his term as demarch (63-64) with the permanent club of Eubulides (59: Εὐβουλιδῆς οὐδ' οἱ μετ' αὐτοῦ; 60: οἱ μετ' Εὐβουλιδοῦ συνεστῶτες), whose members had acted together for many years and had attacked and defended many men for money, according to the speaker (59-60). As this deme seems to have been divided into two factions, that headed by Eubulides and that to which Euxitheus belonged (cf. Haussoullier p. 42), it is more than likely that the men whom he had offended were already members of the other faction, and perhaps of Eubulides' club. The fact that the family of Eubulides was exceedingly wealthy and influential (cf. Haussoullier p. 42) makes it highly improbable that this was a club of sycophants, as Büttner (pp. 87-88) supposes. Cf. *infra* pp. 28-29, 30, 57-58, 84, 130-31.

<sup>4</sup>On these clubs, cf. *infra* pp. 79-81, 95-96. In the course of this study, the word "sycophant" is used in its original meaning.



Although, as has been seen, the clubs were not restricted to any one party, the majority of them seem to have been oligarchic. The general prejudice of the citizens against such organizations, which is not hard to understand in view of the part taken by the clubs in the two oligarchic revolutions, can be traced far down into the fourth century,<sup>1</sup> and we may conclude with Whibley<sup>2</sup> that "politicians of all parties seem to have adopted organizations of this nature to strengthen their positions, but they were especially favored by the oligarchs." That this should be the case is entirely reasonable in view of their aristocratic origin and the natural tendency of such associations to recruit their membership from the upper classes.

#### SOCIAL FEATURES

The banquets held by the Homeric *ἑταῖροι* and the semi-social character of the relation which existed among them have been noted. It is not remarkable that the political clubs which developed from these primitive groups possessed social features.

Plato represents the social aspects of the hetaeries as a distinctive characteristic, when he says, in his comparison of the politician and the philosopher, that the latter has not the slightest interest in "the eagerness for office of the clubs (*ἑταριῶν*) and their parties and dinners and revels with flute-girls."<sup>3</sup> The correctness of this general characterization is attested by a number of specific instances. The hetaery of Andocides and Euphiletus, one of the most notorious political clubs in the history of Athens, was accustomed to assemble for dinners and drinking parties, and it was at one of these gatherings, according to Andocides, that Euphiletus proposed the mutilation of the Hermae.<sup>4</sup> The clubs of Conon and his sons, which took such a prominent part

<sup>1</sup>For example, Demosthenes' insinuations against Midias and his wealthy *ἑταῖροι* and friends (21. 208 ff.; cf. *supra* p. 23. n. 2). For the popular fear of treasonable attempts on the part of the oligarchic clubs, cf. *infra* p. 144. Even the *ἑταῖροι* of Pericles were called by the comic poets, "The new Pisistratids," and Pericles was required to disclaim any intention of establishing a tyranny (Plut. *Per.* 16; cf. *supra* p. 18. n. 5).

<sup>2</sup>*op. cit.* p. 83.

<sup>3</sup>*Theaet.* 173D.

<sup>4</sup>And. 1. 61. On this club cf. esp. And. 1. 61 ff., 54 ff. See also Poland *Geschichte des griechischen Vereinswesens* (Leipzig: 1909) p. 514; Busolt III. p. 1290. n. 3; Vischer pp. 181 ff.; Büttner pp. 69 ff.; Goetz "Der



in the case of *Ariston vs. Conon*, habitually met for banquets and drinking bouts.<sup>1</sup> The club of Alcibiades held dinner parties, for it was at one of them, held in the house of Pulytion, that Alcibiades and his associates were alleged to have profaned the mysteries.<sup>2</sup> It was after one of these drinking bouts with his associates that he invaded the house of Anytus and carried off his tableware.<sup>3</sup> On a similar occasion he assaulted Callias, the son of Hipponicus, for the amusement of his comrades.<sup>4</sup> From what is known of Alcibiades, his mode of life and his companions, it is clear that the social features of his club must have been an element of distinct importance. In view of these examples, it seems not unlikely that the hetaery to which Themistocles owed his rise in politics was identical with the club whose drinking parties he was accustomed to attend as a youth.<sup>5</sup> Even the club of sycophants led by Meneclis and Mnesicles seems to have held revels at the house of Boeotus.<sup>6</sup>

The presence of this social element in the hetaeries is further attested by the political character of many of the ancient scolia. The scolion commemorating the defeat of the Alcmeonid faction at Lipsydrium, *Αἰαῖ, Λειψιδριον προδωσέταιρον*,<sup>7</sup> and the couplet in honor of Cedon, a leader of that faction against the tyrants,<sup>8</sup> as well as the songs in praise of Harmodius and Aristogiton,<sup>9</sup> which were sung at banquets, are filled with the

Hermokopidenprocesz" *Jahrb. f. kl. Phil., Supplbd.* VIII. (1875-1876) pp. 552 ff.; Kirchhoff "Andocidea" *Hermes* I. p. 6; *infra* 30, 35, 37, 39, 113-14.

<sup>1</sup>Dem. 54. 7, 33, 39. For these clubs, Dem. 54 *passim*, esp. 7, 14, 17, 20, 30-40. See also Sandys and Paley *Select Private Orations of Demosthenes* notes *ad. loc.* and Vol. II. pp. 240 ff.; *infra* pp. 28, 31 ff., 35 ff., 57, 78-79.

<sup>2</sup>Isoc. 16. 6 ff.; And. 1. 12. Plutarch (*Alc.* 19, 22) represents the offense as taking place in the house of Alcibiades. Cf. *supra* p. 18. n. 6.

<sup>3</sup>Plut. *Alc.* 4.

<sup>4</sup>*Ib.* 8.

<sup>5</sup>Cf. *supra* p. 18. n. 4.

<sup>6</sup>[Dem.] 40. 57: οὐ μόνον αὐτοὶ ἀσελγῶς ζῶσιν, ἀλλὰ καὶ ὁμοίους αὐτοῖς ἑτέροι πολλοὺς εἰς τὴν οἰκίαν εἰσάγουσιν. The "others" are apparently the associates of Boeotus who are repeatedly mentioned in the course of the speech (cf. *infra* p. 95. n. 3), and the allusion seems to be to drinking parties they hold in the house (cf. Sandys and Paley, note *ad loc.*). See also [Dem.] 58. 40.

<sup>7</sup>Ar. *Cons. Ath.* 19. 3 (Hill.-Cr. 12).

<sup>8</sup>*Ib.* 20. 5 (Hill.-Cr. 26) with Sandys's note.

<sup>9</sup>Hill.-Cr. 7 ff.

political feeling of the Clisthenic party. Another, which calls upon Pallas to "guide aright this city and its citizens, far from woes and factional strife,"<sup>1</sup> suggests the political verse of Solon. In another is playfully set forth the duty of the associate toward his comrade, when the crab admonishes the serpent *εὐθὺν χροῖ τὸν ἑταῖρον ἔμμεν καὶ μὴ σκολιὰ φρονεῖν*.<sup>2</sup>

Again, we find a drinking and dicing club of which Hegesander seems to have been the leader aiding him and Timarchus to escape punishment in the courts after their outrage upon the person of Pittalacus.<sup>3</sup>

We may then conclude that it was by no means unusual for political clubs to have social features, and also that clubs which existed primarily for social purposes would upon occasion aid their members in the courts or take part in politics. The two lines of activity were not at all incompatible. It is impossible to draw a sharp line of demarcation between the political and the social clubs, or, in many cases, to say whether a club whose interests are primarily political and litigious has extended its activities into the social field, or whether men originally drawn together by ties of sociability and good fellowship have diverted their club to the attainment of political ends. The precise ratio of activity in the two directions would of course depend upon the character of the members and upon the necessities and opportunities for political action which might present themselves.<sup>4</sup>

These social gatherings seem usually to have been held in private houses.<sup>5</sup> By no means the least of the advantages which re-

<sup>1</sup>*Ib.* 1.

<sup>2</sup>*Ib.* 15.

<sup>3</sup>Aeschines 1. 58-64; *infra* pp. 52, 61, 91.

<sup>4</sup>Grote (VI. p. 246) speaks of "the various political clubs, conspiracies, or hetaeries, which were habitual and notorious at Athens; associations, bound together by oath, among the wealthy citizens, partly for purposes of amusement, but chiefly pledging the members to stand by each other in objects of political ambition, in judicial trials, in accusation or defense of official men after the period of office had expired, in carrying points through the public assembly," etc.

<sup>5</sup>A meeting of the club of Alcibiades took place at the house of Pulytion (Isoc. 16. 6 ff.; cf. *supra* p. 25); the club of Conon seems to have met at the house, which was no doubt also the shop, of Pamphilus, the fuller (Dem. 54. 7, with Sandys's note); that of Meneclæ and Mnesicles (cf. *infra* pp. 95-96.) seems to have made the house of Boeotus its headquarters (cf. *supra* p. 25. n. 6). The club of Andocides and Euphiletus set out apparently from a meeting in a private house to mutilate the Hermae (And. 1. 64: τὰς θεραπαίνας ἔλαβον οἱ πρυτάνεις ὅθεν ἠρῶμενοι ταῦτ' ἐποίησαν ἐκείνοι).

sulted from this practice was the innocent aspect which was thus given to caucuses of the clubs.<sup>1</sup>

## BASIS OF MEMBERSHIP

Upon what basis were the clubs organized? By what consideration was the Athenian citizen led to affiliate himself with one group of men rather than with another, and by what criterion was his own desirability as an associate judged?

In the relationship of the Homeric *ἑταῖροι*, as established by Finsler, we have seen that this basis was two-fold, involving equality in age, and, to a certain extent, community of social position.<sup>2</sup> This standard seems to have been preserved during the time of the aristocracy, for the hetaery of Cylon was made up of men who were his equals in age<sup>3</sup> and presumably in social standing.<sup>4</sup> This creates a presumption in favor of a similar standard for the clubs of the democratic period.

The only formal definition of *ἑταιρεία* which has been preserved affords an explicit statement on this point. In the Pseudo-Platonic *Definitions* the relationship is described as *φιλία κατὰ συνήθειαν ἐν τοῖς καθ' ἡλικίαν γεγενημένοις*.<sup>5</sup> Here *συνήθεια* seems to denote that similarity in tastes and habits, "congeniality," which would naturally exist among persons of the same general social status, and we may conclude that the individual clubs were composed of men who were congenial to one another and of about the same age. The possibility that this definition may refer to the post-classical *ἑταιρείαι*, or "guilds," composed of craftsmen or persons drawn together by some special interest, may be dismissed. Granting that *συνήθεια* could here be so ex-

<sup>1</sup>Cf. *infra* p. 113.

<sup>2</sup>Cf. *supra* pp. 14 ff. On the general tendency, particularly among primitive people like the Greeks of the Homeric age, to organize into "Altersgenossenschaften," cf. Schurtz *Altersklassen und Männerbünde* (Berlin: 1902).

<sup>3</sup>Hdt. 5. 71: *ἑταιρηίην τῶν ἡλικιωτέων*; cf. *supra* p. 13. n. 7.

<sup>4</sup>See Busolt II. p. 205.

<sup>5</sup>413C. Büttner's translation (p. 1), "eine Freundschaft unter Altersgenossen, durch welche ein näherer Umgang bewirkt werde," cannot be correct; and his statement that the definition "erstreckt sich offenbar nicht auf jene politischen Freundschaften," is unwarranted, in view of the club of Cylon (cf. *supra* p. 13. n. 7; Büttner p. 7) and the general social tendencies of the clubs. Cf. also Diog. Laert. 3. 46.

tended in meaning as to signify similarity of occupation, it is improbable that equality of age could have been a qualification for membership in these trade-guilds.<sup>1</sup> The definition must then refer either to the political clubs with which the name *ἐταιρεία* is most commonly associated, or to simple social organizations of friends, and the latter, as has been seen,<sup>2</sup> were not infrequently identical with the political clubs. Further, the applicability of this definition to the political clubs of classical times may be tested by the facts.

Demosthenes, in the third oration *Against Aphobus*, anticipating the charge that the witnesses who have testified in his behalf have done so falsely and from improper motives, affirms that they cannot have been led to testify δι' ἐταιρίαν for "they are not men of the same pursuits or of the same age with me or even with one another."<sup>3</sup> Conon when a lad belonged to a club of striplings (*μειράκια*),<sup>4</sup> which may have been identical with the club, composed apparently of elderly men, of which he was a member at the time of his litigation with Ariston.<sup>5</sup> His sons also belonged to organizations of young men of their own age.<sup>6</sup> Even in the club of sycophants headed by Meneceles and Mnesicles, the age qualification seems to have been not entirely disregarded.<sup>7</sup>

There must have been exceptions to this, as to every general standard, and it is not unlikely that in clubs in which the political and litigious activities completely overshadowed the social element, members were chosen rather for their wealth, oratorical ability, or personal influence, and the consideration of age and social qualifications carried less weight. Thus in the club of Eubulides,<sup>8</sup> of which the political activities were especially marked, we find also the father of Eubulides, Antiphilus. It is likely, however, that if more complete information were avail-

<sup>1</sup>On these later societies, or "guilds," of persons who followed the same trade or had some other specific interest in common, see the works of Poland or Ziebarth cited in the bibliography.

<sup>2</sup>Cf. *supra* pp. 24 ff.

<sup>3</sup>Dem. 29. 22-23 (Kennedy).

<sup>4</sup>Dem. 54. 39.

<sup>5</sup>*Ib.* 33-35, 7.

<sup>6</sup>*Ib.* 14 ff.

<sup>7</sup>Timocrates, who seems to have belonged to the club (*infra* p. 80. n. 1), was an age-fellow of Boeotus ([Dem.] 40. 59).

<sup>8</sup>*Supra* p. 23. n. 3.



able upon this case it would be found analogous to the situation which obtained in the clubs of Conon and his sons. While the clubs of the father and the son were separate and distinct in their social activities, they worked together in the courts. Again, the club of Eubulides may have separated into smaller groups for social meetings, if these were a prominent feature of its activities.

In general, then, the clubs seem to have been organized on a basis of equality in social standing and age. The presence of the latter standard suggests that particular clubs may have had their beginnings in the friendships which were formed among youths of the same age in the gymnasia and among messmates in the period of ephebic service. In later times, when inscriptional evidence is more abundant, we find a vast number of organizations which originated in the gymnasia and the ephebic classes.<sup>1</sup> And Plato, in the *Laws*,<sup>2</sup> tells us that the gymnasia in the different Greek states of his time were good in many respects, but bad in that they developed cliques or factions (*στάσεις*). It is reasonable to believe that the set of fast young men with whom the sons of Conon messed and tented during their garrison service at Panactus as ephebi are the same who afterwards made up the membership of the boisterous clubs to which they belonged in the city.<sup>3</sup>

#### SIZE

In view of the social and personal element which enters into the organization of the clubs, we should expect to find them for the most part small in size, for congeniality and community of interest are best attained in a restricted circle. Furthermore, a physical limitation was perhaps imposed by the practice of meeting for social purposes at private houses.<sup>4</sup>

<sup>1</sup>Poland pp. 103 ff., 89 ff.; Ziebarth pp. 116 ff.; *ib. Schulwesen* pp. 75 ff.

<sup>2</sup>636B, with Stallbaum's note.

<sup>3</sup>Dem. 54. 3 ff.

<sup>4</sup>Cf. *supra* p. 26. n. 5. Even in the fourth century, Athenian houses were not very spacious (Bekker *Charicles*, trans. ed. 3, pp. 259-60), and the custom of reclining at table must still further have limited the number of the guests who could be entertained in the andron. A club of "wits" (*γελωτοποιοί*) which numbered sixty customarily dined in the Heracleum of Diomia (Athenaeus p. 614; cf. D. & S. *Dict. Ant.*, s. v. *Diomeia*).

Specific instances in which information on the size of the clubs has been preserved support this conclusion. The club of Cylon seems to have been a comparatively small group.<sup>1</sup> The statements of Andocides in regard to the mutilation of the Hermae, if they are accurate, give us the exact size of the club to which he and Euphiletus belonged. All the members except Andocides himself, apparently, were concerned in the sacrilege.<sup>2</sup> Those so implicated were the eighteen denounced by Teucrus,<sup>3</sup> and the four added by Andocides.<sup>4</sup> The club, then, had a membership of twenty-three at the time. The club of Eubulides seems to have been of about the same size, for Euxitheus tells the jury that among the thirty members of the Halimusian deme who remained in the meeting till evening were "all the confederates of Eubulides."<sup>5</sup> This number probably includes a few of the Halimusians who were not members of Eubulides' club but who acted with him on account of their enmity to Euxitheus.<sup>6</sup>

There seems to have been nothing to prevent a man from belonging to several hetaeries if he so desired.<sup>7</sup> Thus the one hundred associates of Cimon mentioned by Plutarch,<sup>8</sup> need not have been members of one large organization. A man of Cimon's social and political prominence would probably be affiliated with a number of clubs, as is often the case in our own day, and would have a large number of associates.<sup>9</sup>

<sup>1</sup>Herodotus (5. 71) says nothing regarding the size of this club, but the words *ἑταιρητήν τῶν ἡλικιωτέων*, as has been noted (*supra* p. 13), suggest that it was not large.

<sup>2</sup>And. 1. 61 ff., esp. 63.

<sup>3</sup>*Ib.* 34 ff.

<sup>4</sup>*Ib.* 52. "Andocides' evidence on this point appears conclusive" (Marchant, note *ad loc.*; cf. Jebb I. pp. 72-77). Andocides is speaking here only of those denounced by Teucrus in connection with the Hermae (34), and we need not add the twelve whom Teucrus accused of complicity in the profanation of the Mysteries (15).

<sup>5</sup>Dem. 57. 10: *οἱ δὲ κατάλοιποι ἦσαν οὐ πλείους ἢ τριάκοντα* (cf. 17). *ἐν δὲ τούτοις ἦσαν ἅπαντες οἱ τούτῳ παρεσκευασμένοι.*

<sup>6</sup>Cf. *supra* p. 23, n. 3. It is of course possible that the club had members outside of the deme, but I do not regard it as probable.

<sup>7</sup>Dem. 54. 14: *καλοῦσι τοὺς μὲν ἰθυφάλλους, τοὺς δ' αὐτοληκίθους . . . καὶ δὴ καὶ τὸν υἱὸν τὸν ἑαυτοῦ εἶναι τούτων ἕνα*, while not conclusive, suggests that the son of Conon belonged to both clubs.

<sup>8</sup>Plut. *Cim.* 17.

<sup>9</sup>No doubt every man had his favorite club, composed of those with whom he was most intimate. In the case of a party leader, such as Pericles or Cimon, this would no doubt include his closest and most influential adherents, and would be the club chiefly associated with his

## NAMES

The names of three of these Athenian clubs, those whose activity in the trial of *Ariston vs. Conon* is described by Demosthenes, have been preserved.<sup>1</sup> The organizations to which the sons of Conon belonged were known as the "Ithyphalli" and the "Autolecythi,"<sup>2</sup> that of which Conon was himself a member in his younger days as the "Triballi."<sup>3</sup>

The lexicographers have made these names the topic of a considerable amount of speculation, and give a number of explanations which are ingenious rather than convincing.<sup>4</sup> Sandys, in two excursuses to the speech,<sup>5</sup> examines the evidence on the meaning of these names, and comes to the conclusion that they were assumed by the reckless young men who composed the clubs in a spirit of youthful pleasantry or bravado, a view of which the correctness can hardly be questioned.<sup>6</sup> The sense of "Autolecythi," he thinks, may be best given by some such rendering as "gentleman beggars," "amateur tramps." In the case of the "Triballi," he draws attention to a very interesting coincidence, that a calculation of the time when Conon would have been a *μειράκιον* "brings us to the very year in which the wild Triballi crossed the Haemus with a strong force, ravaged the southern coast of Thrace near Abdera, and were forced to retreat by the Athenian commander Chabrias. The name of the barbarous tribe would therefore be on the lips of all Athens during the youth of Conon and his friends, and would readily find currency as a slang term of the day." As parallels to the "Triballi" and the clubs of Conon's sons, he cites the "Mohocks" of London, described in the *Spectator*, the German clubs called "Polacken," "Tartaren,"

name. It is convenient to speak of "the club" of Cimon, or Pericles, or Midias, without implying that the person mentioned belonged to only one club.

<sup>1</sup>On these clubs, see *supra* p. 25. n. 1.

<sup>2</sup>Dem. 54. 14 ff.

<sup>3</sup>*Ib.* 39.

<sup>4</sup>Harpocration, s. v. *Ἀυτολήκῃθιοι*; *Τριβαλλοί*; Photius, s. v. *Τριβαλλοί*, *Ἰθύφαλλοι*; Hesychius, s. v. *Ἀυτολήκῃθιοι*; Bekker *Anec. Gr.* 465. 17; Pollux 10. 62, and the passages cited by Sandys (cf. note following).

<sup>5</sup>Sandys and Paley *Select Private Orations of Demosthenes* II. (ed. 4) pp. 240 ff.

<sup>6</sup>On the view of Lüders and Usener, that these were bands of Dionysiac worshippers, cf. *infra* p. 35. n. 5.

"Husaren," "Kroaten," and the French "Cosaques," and "Pancours." He might have added the famous American political organizations, the "Tammany" clubs, in which the same practice of taking over the names of a barbarous people is seen,<sup>1</sup> and which resemble the Athenian clubs in that they first existed for social purposes primarily and were later turned to political uses.<sup>2</sup>

The spirit in which these names were assumed by the members of the clubs mentioned by Demosthenes is admirably shown by a parallel which Sandys cites without comment. Lysias, in a fragment of the speech *Against Cinesias*, the dithyrambic poet, says that Cinesias, with Apollophanes the comedian, Mystalides, and Lysitheus, used to meet for banquets on forbidden days, and that instead of following the usual practice and calling themselves from the day of the month on which they met "Numeniastae," they adopted the name "Cacodaemonistae," "making sport of the gods and of Athenian laws."<sup>3</sup> "Cacodaemonistae" is not a pun upon "Numeniastae," as might at first appear from the words ἀντὶ δὲ νουμηνιαστῶν. The latter appellation is that which they would have assumed had they named their club, in accordance with the prevailing custom,<sup>4</sup> from the day of the month on which they banqueted. It has apparently remained unnoticed that "Cacodaemonistae" is a parody of "Agathodaemonistae," a name assumed by certain religious bodies.<sup>5</sup> Jebb's translation "Mephistopheleans" gives the general sense well, if we consider the way in which such a title would have been regarded in the England of Cromwell or in the New England of the early Puritans.<sup>6</sup> Additional point to the parody is sug-

<sup>1</sup>See Jernegan *The Tammany Societies of Rhode Island* (Providence: 1897) pp. 10 ff., esp. p. 12.

<sup>2</sup>*Ib.* p. 10: "These societies (the earlier Tammany clubs) seem to have been simply patriotic clubs, like many others of this period, meeting primarily for social purposes, and having little or no thought of political action."

<sup>3</sup>Lysias *fr.* 53. 2.

<sup>4</sup>For this custom, cf. Poland p. 64.

<sup>5</sup>Cf. Poland p. 227. Although the inscription from Rhodes in which the name appears is later than this time, the worship of the Ἄγαθος δαίμων seems to have been widespread, and libations to the Ἄγαθος δαίμων were customary at Athens at an even earlier period (Aristoph. *Wasps* 525). Cf. Roscher's lexicon, s. v.

<sup>6</sup>*I.* p. 311. A good parallel is found in the "Hell-Fire Club" and other



gested by Hesychius' definition of "Agathodaemonistae" as οἱ ὀλιγοποτοῦντες.<sup>1</sup> It is possible that the name "Ithyphalli" was suggested by the use of the term in regard to certain devotees of the Dionysiac worship.<sup>2</sup>

The club of Cinesias corresponded in many respects to those of Conon and his sons. It was made up of riotous men-about-town, and displayed the same irreligious spirit in the selection of a name. There is to be sure no explicit evidence that it was a political club, but it is interesting to note that, of the members named, Lysitheus appears several times in the speeches of Lysias as a party to litigation,<sup>3</sup> and Cinesias, in addition to the present trial, is mentioned as one of the accusers in the *Defense on a Charge of Taking Bribes*, and as being himself defendant on a charge of impiety.<sup>4</sup> It is, then, fairly certain that the members of this club were litigiously inclined and of some political prominence, and we may believe that their club aided them in these activities.

Just what proportion of the clubs had names it is impossible to determine. The lack of evidence on this point may be due to the Greek habit of concrete expression and the tendency to refer to a club by the name of a prominent member.<sup>5</sup> It will be observed that in the cases where names are preserved they are mentioned for a specific purpose, to throw light on the character of the clubs to which they belong. This accounts for the fact that these names are from clubs of this one class. There were no doubt many clubs of a more respectable character which had names of a very different sort, but there would be no object in citing these.<sup>6</sup>

"blasphemous clubs" of London men-about-town (see Timbs *Clubs and Club Life in London* [London: 1886] p. 38).

<sup>1</sup>S. v. Ἀγαθοδαμονισταί.

<sup>2</sup>Photius, s. v. Ἰθύφαλλοι, where there are traces of confusion.

<sup>3</sup>Lys. 10. 1, 12 (Frb); *fr. or.* 85.

<sup>4</sup>Lys. 21. 20

<sup>5</sup>Whibley (p. 84. n. 4) calls attention to this usage: "thus we hear of the hetaeries of Phaeax, Euphiletus, Alcibiades, etc." For the Greek manner of citing clubs and societies, see the names given by Poland (esp. p. 7. n. 3) and Ziebarth. Cf. *supra* p. 7.

<sup>6</sup>Plutarch relates that in Miletus, during the period of civil strife that followed the expulsion of the tyrants, the oligarchs and the popular party were each headed by a *ἑταιρεία*, the one named "Ploutis," and the other "Chiromacha." (*Mor.* 298C; cf. Szanto in Pauly-Wis., s. v. Χειρομάχα).

## OATHS AND PLEDGES

That the relation of *ἔταιρεία* was confirmed by oath appears from the employment of *συνωμοσία* as a synonym,<sup>1</sup> and is explicitly stated by Photius, who defines *συνωμοσία* as *ἡ μεθ' ὄρκου φιλία*.<sup>2</sup> The oligarchic oath preserved by Aristotle,<sup>3</sup> "I will be evilly disposed toward the demos, and will contrive against it whatever ill I can," is commonly associated with the Athenian clubs.<sup>4</sup> But Aristotle is speaking neither of Athens nor of hetaeries in the passage, and there is no evidence that any Athenian club ever required its members to swear such an oath on joining.<sup>5</sup>

Lysias several times mentions oaths that were sworn by the associates at the time of the oligarchic revolutions, both those which were taken in 411,<sup>6</sup> and those which were taken in 404,<sup>7</sup> and also alludes to an oath which the informer Theocritus pretended to have sworn in common with the generals and taxiarchs whom he accused.<sup>8</sup> Probably, however, none of the oaths referred to is the regular "club oath," which would be taken by a member on joining. The oaths of the associates which he mentions were no doubt the special obligations assumed by members of the clubs which entered the conspiracies on particular occasions. Such an oath, entirely apart from the regular club oath, was probably taken by the associates when the conspiracy of the Four Hundred was first organized at Samos and again when Pisander extended the combination to Athens.<sup>9</sup> These oaths it was which the law of Demophantus declared null and void.<sup>10</sup>

<sup>1</sup>Cf. *supra* p. 6.

<sup>2</sup>S. v. *συνωμοσία*. Clearly this definition does not refer to the relationship between mere conspirators.

<sup>3</sup>*Pol.* 1310 a 9.

<sup>4</sup>Vischer (p. 171. n. 3) seems to imply that such oaths were at some period taken by the Athenian clubs, and this passage is commonly quoted in studies of the clubs at Athens.

<sup>5</sup>On the other hand, it is not at all improbable that clubs of the extreme oligarchs at Athens may have sworn this or a similar oath.

<sup>6</sup>12. 67.

<sup>7</sup>12. 46-47, 77.

<sup>8</sup>13. 21.

<sup>9</sup>Thuc. 8. 48. 2, 54. 4.

<sup>10</sup>And. 1. 98.

The oath of Theocritus would not be that of a hetaery, but of the alleged conspiracy of which he gave information.

From these instances, it seems probable that whenever a number of clubs united for any purpose it was the practice to assume a special obligation for the occasion, in accordance with Greek usage. It is also likely that when smaller circles within a club undertook to carry through a special matter, as for example a lawsuit, they reinforced the bond of club membership by a special oath-bound agreement for the particular occasion, although there is no instance of this. But such special oaths, even in the prosecution of unlawful designs, were not uncommon at Athens.<sup>1</sup>

When enterprises of unusual importance or danger were on hand, an oath was not always deemed a sufficient assurance of fidelity and good faith. The parties to the undertaking would sometimes bind themselves together still more irrevocably by uniting in the perpetration of some serious outrage, in order that all might be incriminated and might, having thus committed themselves, be prevented from betraying their associates. Such an obligation was termed a *πίστις*, and an excellent example is the assassination of Hyperbolus by the Samian and Athenian oligarchs during the revolution of 411, a deed which was intended to constitute a "pledge" of fidelity among the members of the conspiracy.<sup>2</sup> Andocides says that Euphiletus proposed the mutilation of the Hermae as a "pledge."<sup>3</sup> The view has been suggested that the club of Andocides and Euphiletus was contemplating an attack upon the democracy, and that the participation of the members in this outrage constituted an assurance that they would not draw back or play false.<sup>4</sup>

#### INITIATIONS

The plaintiff in *Ariston vs. Conon* alludes to unmentionable rites of initiation performed by the members of certain clubs.<sup>5</sup>

<sup>1</sup>[Dem.] 48. 9; 43. 7; And. 1. 42; Lys. 12. 9-10.

<sup>2</sup>Thuc. 8. 73. 3; cf. *infra* pp. 107-108.

<sup>3</sup>And. 1. 67. Cf. Goetz pp. 551-53.

<sup>4</sup>Cf. Busolt III. p. 1290. n. 3.

<sup>5</sup>Dem. 54. 17, with Sandys's note: "who initiate one another with Priapic rites;" Kennedy translates: "the rites which they perform \* \* \* are so indecent." The view advanced by Lüders (*Die Dionysischen Künstler* p. 18) and Usener (*Götternamen* p. 359) that these clubs are

This raises an interesting question: to what extent did the custom of initiating members into the clubs prevail?

The lewd rites alleged in this passage were probably not intended to strengthen the bond of *ἑταιρεία* which led the members to assist their comrade, but were merely an expression of the boisterous and licentious spirit displayed by the members on many occasions.

The travesty upon the initiation into the Eleusinian Mysteries which the club of Alcibiades was said to have conducted at the house of Pulytion,<sup>1</sup> may have been an instance of the same practice. The fact that no fewer than four groups of men were charged with this offense,<sup>2</sup> would indicate that this particular form of sacrilege appealed to the fast youth of Athens and that it was at the time a fashionable diversion of the clubs to travesty the mysteries at their drinking bouts. The element of impiety and contempt of religion involved in the proceeding accords with the spirit of agnosticism which was manifested by the young Athenians of the time, and examples are not wanting in other clubs. The "Triballi" held sacrilegious feasts at which the members devoured the "feast of Hecate" and the testicles of the pigs slain for sacrifice at the opening of the ecclesia.<sup>3</sup> The club of Cinesias held feasts on forbidden days, made sport of the gods and the laws of the state, and crowned these impious actions by the assumption of the name "Cacodaemonistae."<sup>4</sup>

Interesting as are these facts, particularly in view of their association in the popular mind with oligarchic plots, they must be regarded as incidents in the social life of the more boisterous clubs. But it is not impossible that certain of the clubs had

religious associations in honor of the daemon "Ithyphallus" I cannot accept. Sandys has established conclusively that these were riotous clubs of young men, the opposite of religious in character and habits. The view of Lüders and Usener has many weak points: (1) it is supported by no direct evidence; (2) it is at variance with the tone of the speech and the purpose for which the clubs are mentioned; (3) it affords no explanation of the name "Autolecythi"; (4) it involves the translation of the present passage by "die sich dem Dionysischen Dämon Ithyphallus geweiht hatten," a rendering which *τελοῦντες ἑαυτοῦς* might conceivably, but which *τελοῦντες ἀλλήλους* cannot possibly bear.

<sup>1</sup>Isoc. 16. 6; Plut. *Alc.* 22; cf. *supra* p. 25. n. 2.

<sup>2</sup>And. 1. 13, 15, 16, 17.

<sup>3</sup>Dem. 54. 39.

<sup>4</sup>Lys. *fr.* 53. 2.



some form of initiation at which the oath was administered, and which was intended to make more binding the tie that existed among the members.

#### SECRECY

While there is no specific statement that the clubs were secret organizations,<sup>1</sup> it may reasonably be inferred that this was the case, in so far that their proceedings were conducted with the degree of secrecy essential to the success of their undertakings. Their activities were chiefly of a sort which had to be kept secret in order to guard against their being thwarted, and many of their intrigues were of such a character that it would have been dangerous to have them generally known.

That the clubs were not always successful in concealing from public knowledge what went on at their meetings is shown by the fact that the profanation of the Mysteries by the club of Alcibiades transpired.<sup>2</sup> The mutilation of the Hermae by the club of Andocides and Euphiletus, according to the story of the former, was not very successfully concealed, for all but four of the perpetrators had already been discovered when Andocides laid his information.<sup>3</sup> The former offense was committed at a social gathering, and may have been revealed through the slaves who were necessarily present in the performance of their duties; the latter also was debated at a banquet of the club members, and reports of it may have spread abroad in the same way.<sup>4</sup> But these instances, in which the proceedings of the clubs became known, must have been but a small proportion, and in many cases the associates were no doubt successful in keeping their actions secret.

The mutilation of the Hermae was an outrage of the most serious nature, as is indicated by its having been chosen as a

<sup>1</sup>Vischer (p. 171) and Whibley (p. 84) cite as evidence that the clubs were secret organizations Plato *Rep.* 365D: ἐπι γὰρ τὸ λαθάνειν ξυνομοσίας τε καὶ ἑταιρείας συνάξομεν. The statement, however, does not have this meaning, but ἐπι τὸ λαθάνειν means merely "in order to keep from being found out," and therefore to escape punishment. (cf. Dem. 51. 15: εἰ μὲν λάθωσιν, ἔχειν, εἰ δὲ ληφθῶσιν, συγγνώμης τυχεῖν).

<sup>2</sup>Cf. *supra* p. 25. n. 2.

<sup>3</sup>And. 1. 59; cf. *ib.* 15, 34 ff.

<sup>4</sup>Cf. *supra* p. 24. n. 4.

pledge,<sup>1</sup> and every effort must have been made to keep it secret. On the other hand, the travesty on the Mysteries, probably the thoughtless diversion of a drinking party, was not so carefully guarded against the possibility of leaking out. It is even possible that it would not have been regarded so seriously had it not been disclosed at a moment when popular indignation stood at white heat on account of the Hermocopid affair and when the enemies of Alcibiades were industriously fanning the flame.<sup>2</sup> At least, other impious and irreligious proceedings, such as the acts of Conon and his companions and the sacrilegious banquets of the "Cacodaemonistae," seem to have been generally known and gossiped about at Athens.<sup>3</sup> It is improbable that any more serious attempt was made to keep them secret than is made today to prevent the indiscretions of riotous social gatherings from reaching the public ear.

Doubtless, however, greater care was exercised when a club was engaged in political or litigious activity. It is interesting to note in this connection the means which Plutarch says a club in Miletus employed to keep secret its deliberations on important matters. The members of the aristocratic club "Ploutis," after having gained control of the state, used to embark on boats and put out far from the shore, where they would hold their deliberations; when these were concluded, they returned to the city.<sup>4</sup>

#### THE BOND OF CLUB MEMBERSHIP

The organization of the clubs brought the members into a close relationship. The natural ties of age, congeniality of temperament, and mutual interest acquired the sanction of usage and habit and were confirmed by oaths. The result was an effective bond between the members, at times implicitly recognized and at other times explicitly termed *ἔταιρεία* and *ἔταιρικόν*,<sup>5</sup> that constituted an obligation not lightly to be broken. The extremely serious and binding character of this obligation is most forcibly illustrated by the lengths to which associates go in order

<sup>1</sup>Cf. *supra* p. 35.

<sup>2</sup>Cf. *infra* p. 101. n. 4; Marchant *Andocides* pp. 5-6.

<sup>3</sup>Cf. *supra* p. 36.

<sup>4</sup>Plut. *Mor.* 298C.

<sup>5</sup>Cf. *supra* p. 6. n. 1, n. 5.

to shield their comrades, as will appear in succeeding chapters. But there are several statements regarding its gravity which may be cited here. Aristides felt that the obligations of a club member to his associates were not compatible with justice.<sup>1</sup> Plato in the *Republic* classes the betrayal of an associate in private life or of a state in public life with theft and temple robbery.<sup>2</sup> Andocides, in discussing his connection with the mutilation of the Hermae and the profanation of the Mysteries, feels obliged to make his strongest defense against the imputation of having betrayed his comrades. Before a democratic audience, by whose members those comrades were regarded as having outraged the national religion and conspired against the state, he devotes a considerable part of the *De Reditu* and over one-eighth of the *De Mysteriis* to answering the imputation of disloyalty to his associates. And Thucydides gives us a graphic description of the weight which attached to the club bond at the time of the Peloponnesian war, in his chapters on the state of Greece.<sup>3</sup> "Reckless daring was held to be loyal (*φιλέταιρος*) courage; \* \* \* the man who took counsel beforehand to have nothing to do with plots was considered as a breaker of the bond (*έταιρία*) and one who feared the opponents; \* \* \* the club bond (*τὸ έταιρικόν*) was stronger than blood relationship, because the comrade was more ready to dare without asking why."

<sup>1</sup>Plut. *Arist.* 2.

<sup>2</sup>443A: Οὐκοῦν καὶ ἱεροσυλιῶν καὶ κλοπῶν καὶ προδοσιῶν, ἢ ἰδίᾳ έταιρῶν ἢ δημοσίᾳ πόλεων, ἐκτός ἂν οὗτος εἴη.

<sup>3</sup>3. 82 ff. (Jowett).

## CHAPTER III

## THE CLUBS IN LITIGATION

## INTRODUCTORY

The language used by Thucydides in characterizing the clubs, *συνωμοσται ἐπὶ δίκαις*, exhibits their activity in litigation as a distinctive feature.<sup>1</sup> The ancients regarded club affiliations as particularly important for litigants. Plato gives striking expression to this feeling when he says that it will be possible to do injustice and yet to appear just and upright, "for we will organize sworn associations and clubs in order to escape detection."<sup>2</sup> Demosthenes attributes Midias' practical immunity from prosecution to the fear inspired by his boldness, by the associates who throng round him, and by his wealth.<sup>3</sup> The confidence engendered by club affiliations is mentioned as an encouragement to litigation.<sup>4</sup>

We have now to inquire just how the clubs operated in this field. What were the precise methods employed to assist members in lawsuits? This question I have endeavored to answer by collecting from the orators a number of instances in which friends or associates were able to aid litigants by taking advantage of the opportunities which the Athenian court system afforded. These include cases in which the machinery of justice is alleged to have been manipulated unlawfully to the advantage of organizations or individuals, and others which show how assistance could be rendered by legitimate means.<sup>5</sup>

<sup>1</sup>8. 54. 4.

<sup>2</sup>*Rep.* 365D. Cf. *supra* p. 37. n. 1.

<sup>3</sup>21. 20. On Midias' club, cf. *supra* p. 23. n. 2.

<sup>4</sup>Isaeus *fr.* 22. 2 (Scheibe). Hagnotheus is said to have brought suit against Calydon *πιστεῶν δ' ἑταίρειαις*.

<sup>5</sup>It is a mistake to regard the litigious activities of the clubs as essentially and *per se* unlawful, as there were many opportunities for *ἑταίρου* to aid a comrade in a thoroughly legitimate manner. It is, however, unlikely that organizations whose chief activity was the support of their members in litigation would be content with these. As a matter of fact they were not, and clubs of certain types hesitated at nothing to gain their ends. Again, it was not alone the guilty man who availed



The reliability of the orators as sources of information has frequently been called in question.<sup>1</sup> It is pointed out that they are interested parties, and that too much credence should not be given their unsupported statements. This is admitted, but it still does not invalidate their testimony in regard to corruption in general. It would have been foolish indeed for a litigant to accuse his opponent of an offense unheard-of at Athens; he would of course choose an allegation of reasonable probability. Consequently, a study of the charges and counter-charges found in the orators will reveal many of the intrigues and bits of sharp practice which were resorted to by litigants and their friends. And it must be kept in mind that we are interested in specific cases only so far as they give us a basis for general conclusions. For example, the story of Aeschines that Demosthenes attempted to suborn a witness<sup>2</sup> may or may not be true. It does not prove that Demosthenes was guilty of the offense. It does prove, however, that the subornation of perjury took place, that the act and the terms which described it were familiar to a jury of the time.

Not all allegations of corrupt practice, however, can be lightly discarded, for many bear the stamp of truth. A man confesses before the court that he has connived at the introduction of perjured testimony.<sup>3</sup> A speaker describes cases of jury bribing in which he has not the slightest interest one way or the other, for he merely adverts to them as well known facts, by way of illustration to a jury.<sup>4</sup> In still other instances, charges of sharp practice are substantiated by the testimony of disinterested witnesses.<sup>5</sup> And finally it must be remembered that in general the members of an Athenian jury as individuals were tolerably

himself of his club affiliations in fighting a case. So notorious were the vagaries of the dicasts that litigants constantly feared a miscarriage of justice (cf. *infra* pp. 99 ff.) and even innocent men were led to defend themselves by unlawful means.

<sup>1</sup>Kennedy *The Orations of Demosthenes* IV. App. vi, esp. pp. 354, 364 ff.; Wyse *Isaeus* Preface.

<sup>2</sup>2. 154 ff.

<sup>3</sup>[Dem.] 48. 44.

<sup>4</sup>Aeschines 1. 86-88.

<sup>5</sup>E. g. Dem. 54 (*Ariston vs. Conon*), where the falsehood of depositions made by Conon's associates seems to be clearly established; Dem. 57. 8-14 (*Euxitheus vs. Eubulides*), where parties to the intrigue apparently admit the facts recited by the speaker.

well acquainted with the facts in important cases, and that a speaker would not dare to go too far in misrepresentation.<sup>1</sup>

In seeking out and presenting these cases, the purpose has not been to show that the Athenian administration of justice was essentially corrupt, or to paint conditions in darker colors than they deserve.<sup>2</sup> Improper practices may have been the exception rather than the rule. Many actions which are now considered unfair were not so regarded by the Athenians. And the cases cited illustrate the proper and strictly legitimate advantages to be derived from the possession of associates or friends as well as the opportunities for corruption and sharp practice which the weaknesses of Athenian legal procedure afforded clubs and cliques.

That hetaeries were responsible in every instance no one would affirm. But the great majority of them can be clearly traced either to clubs or to combinations and cabals which used the same methods. Most of the expedients which we find litigants

<sup>1</sup>Bonner *Evidence in Athenian Courts* (Chicago: 1905) pp. 84-85.

<sup>2</sup>In case anyone feels that the conditions described could not have existed in the Athens of Pericles and Demosthenes, let him consider the evils which flourish in our own time and country, as revealed by the Adams county (Ohio) investigation of vote-selling, or the Rosenthal murder case in New York. As an indication of conditions known to exist in our large cities, I quote from *The Chicago Tribune* of November 6, 1910, an editorial headed "CORRUPTION IN THE JURY BOX." "The shocking miscarriage of justice in the Browne trials, the disclosures in the Erbstein-McCutchen affair, and the counter attack upon the state's attorney are grave enough in themselves.

"But they become very much more grave when they are understood to be not sporadic evils but evidence of a profound and widespread corruption of the administration of law in this community.

"Perjury and the subornation of perjury have long been known by judges and lawyers to be prevalent. Jury bribing, jury fixing is almost recognized as a trade. Conspiracies to evade or defeat justice thrive on conditions which are deep seated and of long tolerance.

"The evils which undermine the administration of legal justice in this county are subterraneous. It is very difficult to get hold of them to root them out. Nevertheless this must be done if the decent citizens of this community are to feel any security of life, liberty, or property, or if law is to be held in any respect by either bad citizens or good.

"In justice to the judges, in justice to the honorable practitioners of the law, in justice to honest suitors, in justice to the community, this work of cleaning our courts must be undertaken without further delay. And in this work bench and bar must be the leaders. Chicanery, suspicious conduct, loose regard for methods, disrespect for the oath, all so prevalent, must be dealt with more drastically, and every honest effort to run down and punish the man, lawyer or layman, who tampers with the processes of justice should be heartily and actively supported by the profession."

employing were known and used by the clubs. While in the case of others there is no specific evidence, there is a strong presumption that the clubs neglected no possible means of gaining their ends. We have to study not merely the actual operations of the clubs, but the opportunities which lay open to them as well. Not otherwise will their methods be understood.

A club often acted directly and the members engaged in trials personally, but sometimes indirectly, through agents whom the members hired or otherwise procured.

It is not at all surprising that on some points there is a lack of evidence. What is really remarkable is that in the comparatively small number of cases in which the arguments have been preserved so many and such diverse instances of club activity are found.<sup>1</sup>

#### MONEY CONTRIBUTIONS

At Athens, as elsewhere, money could procure for the litigant every weapon of legal attack and defense. Almost every kind of assistance which might be demanded by right of friendship or *éταρπεία* could also be purchased.<sup>2</sup> Under ordinary circumstances, no more effective assistance could be given a friend or comrade than a contribution of money with which to fight his case. This, although it might be employed merely in meeting the legitimate expenses which an action at law entailed, was often used in a variety of questionable manoeuvres. Not only was it acceptable to the litigant, but it enabled the wealthy associate to fulfill his obligation in the easiest and most convenient way.

The most important instance of such a contribution is described by Andocides.<sup>3</sup> Agyrrhius and a number of speculators who were engaged in farming the taxes had organized a sort of business club with the object of stifling competition in bidding

<sup>1</sup>The uniform policy of the pleader before an Athenian court is to hold the opponent personally responsible for everything, and to mention accomplices only when it is absolutely necessary for clearness of statement.

<sup>2</sup>For a general statement of the advantages of wealth in litigation, cf. Dem. 21. 112. Particular uses to which money contributions could be put are discussed in the following sections.

<sup>3</sup>1. 132 ff.

and thereby increasing their profits.<sup>1</sup> The first year they had been successful in carrying out their scheme, but the year following Andocides had organized a rival company and had overbid them, finally securing the contract at a price six talents in excess of that which they had paid. Thereupon Agyrrhius and his associates decided that they must get Andocides out of the way at any cost, by fair means or foul, and they joined with Callias and Cephisius in prosecuting him on a charge of impiety. They then raised a sum of money to assist in the prosecution, each one contributing a share.<sup>2</sup> It is the opinion of Marchant<sup>3</sup> that Cephisius, who seems to have had charge of the prosecution, was eranarch of this fund, and that the sum of one thousand drachmas which Callias is said to have paid him<sup>4</sup> was the latter's contribution, a large one because Callias was extremely rich and had much at stake.<sup>5</sup>

Contributions of money from the club of sycophants of which

<sup>1</sup>*Ib.* 133: μετόσχον...οἱ παρασυλλεγόντες ὑπὸ τὴν λεύκη. Boeckh (*Staatshaus-haltung der Athener* [Berlin: 1886] I. p. 385) infers from this passage that the poletes let the tax to the highest bidder "bei der weissen Pappel," and on the strength of his opinion it has been stated that the word λεύκη designates the customary place for this transaction (L. & S., s. v.). This assumption, for which I have been unable to discover any more precise grounds, utterly disregards the purpose of the orator in using the phrase, which is to inform his hearers clearly just who were the associates of Agyrrhius in his enterprise. If ὑπὸ τὴν λεύκην meant the "place where the tax is let," the expression οἱ παρασυλλεγόντες ὑπὸ τὴν λεύκην would apply equally to Andocides himself and his associates, or to any one who appeared to bid, and would lose all point. It refers, however, to a definite and well known group of men, for Andocides completes his sentence by οὗς ἡμεῖς ἴστε οἳοί εἰσιν. The phrase describes one of the groups which, in accordance with Athenian habit, assembled daily in the neighborhood of the agora (Lys. 24. 20; Dem. 25. 52; Xen. *Mem.* 4. 2. 1; cf. Bekker *Charicles* [trans. by Metcalfe, ed. 3] p. 279); the dicasts at once understood just whom he meant, the men who met and passed their time together "under the white poplar." Thus the foundation for this temporary business organization is seen to have been a distinct group or clique, possibly of many years' standing. Whether or not this group had political or litigious interests outside of the present trial, it is impossible to say. But the case is of great value, for it shows how any club, political or otherwise, which became concerned with litigation would raise a fund for use in the courts.

<sup>2</sup>*Loc. cit.*: χρήματα εἰσενεγκούσιν ἐπ' ἐμοί, κτλ. Cf. the eranus of two talents raised by the symmory leaders and placed in the hands of Aeschines to oppose the trierarchic law of Demosthenes (Dem. 18. 312; cf. Boeckh I. p. 312).

<sup>3</sup>*Andocides De Mysteriis and De Reditu* p. 26 (int.) and note to 1. 132.

<sup>4</sup>*And.* 1. 121.

<sup>5</sup>*Cf. infra* p. 53. n. 4.



Melas, the Egyptian, was the head are mentioned by Isaeus in the speech *On the Estate of Dicaeogenes*. Melas and the members of his club had persuaded the adopted son of the testator, also named Dicaeogenes, who had been given one-third of the estate, to sue for the entire property.<sup>1</sup> This seems to have been a business venture upon the part of Melas and his companions, for they had advanced money to Dicaeogenes, in addition to aiding him by their testimony,<sup>2</sup> with the understanding that they were to share in the proceeds of the suit in the event that he established his claim.<sup>3</sup> Whether the money thus contributed was employed in fighting the case, or was for the personal use of Dicaeogenes, is not stated.

A money contribution was a convenient form of assistance in cases where it was inexpedient for the connection between the litigant and his supporter to be generally known. Thus we are told by Demosthenes that Aeschines, in the case of the false embassy, used Philip of Macedon as his "choregus" and employed the funds which that monarch contributed in hiring witnesses to testify in his behalf.<sup>4</sup> Onetor is alleged to have given secretly to his brother-in-law Aphobus means for bribing witnesses.<sup>5</sup> The open appearance of Onetor in the case might have made impossible the trickery to which the two later resorted in resisting collection of the judgment from Aphobus.<sup>6</sup> In each of these cases, this form of assistance was chosen because of its secrecy and convenience. It may therefore be assumed that money contributions were substituted for personal aid when the circumstances of the case and the relations of the parties made it advisable.

It is a question to what extent this practice obtained in such clubs of wealthy men as that of Midias.<sup>7</sup> At first glance it would seem to be the most natural way for rich men to assist one another, and without doubt most wealthy citizens would prefer to meet

<sup>1</sup>Isaeus 5. 7 ff., 40; on this club, see Leisi p. 119, and, for a criticism of his conclusions, *infra* p. 95. n. 3.

<sup>2</sup>Cf. *infra* p. 80.

<sup>3</sup>Isaeus 5. 40.

<sup>4</sup>19. 216. This may refer only to the bribes which Aeschines had accepted from Philip and not to a specific defense fund.

<sup>5</sup>Dem. 29. 28.

<sup>6</sup>Dem. *or.* 30 and 31; cf. Kennedy IV. p. 125.

<sup>7</sup>Cf. *supra* p. 23. n. 2.

their obligations toward an associate by recourse to their strong-boxes rather than by personal effort. But, on the other hand, if their comrade were himself wealthy, he would not desire their money so much as their personal support as advocates or witnesses, which would be doubly valuable by reason of their social position and prestige. He would consequently be reluctant to accept financial assistance in lieu of the personal service to which he was entitled. So it is not surprising to find the rich friends and associates of Midias not contributing money but appearing personally in his behalf,<sup>1</sup> and Midias himself and his brother Thrasylochus giving their services in person to Aphobus.<sup>2</sup>

Also in the case of clubs of pettifoggers and sycophants, such as that of Mnesicles and Meneclēs,<sup>3</sup> which were really associations for profit, the members would be more likely to give a comrade their personal services than to contribute money. It would appear, therefore, that this mode of assisting a comrade who was involved in litigation was most prevalent among men of the middle class. Men of no great wealth or influence, quiet, ἀπράγμονες, would prefer to help in this way, and to such men it would be most welcome. The existence of a class of hireling witnesses and accusers<sup>4</sup> and the professional character of the skilled advocate,<sup>5</sup> would tend to increase this practice.

When a litigant had incurred a fine or a judgment had been given against him, a money contribution was the only form of assistance which would avail. In such cases it was usual for friends to contribute and make up the requisite sum.<sup>6</sup>

The fund collected among the members of the club of tax-farmers to aid in the prosecution of Andocides shows by analogy how a political club might proceed in such a case. While here the organization acted as a unit, it is entirely conceivable that a member might apply to only a few of his fellows, or even to one, for the amount of which he stood in need.

<sup>1</sup>Dem. 21. 213-16; cf. *infra* p. 64.

<sup>2</sup>Dem. 28. 17; 21. 78-79; cf. *infra* pp. 54 ff.

<sup>3</sup>*Infra* p. 95. n. 3.

<sup>4</sup>*Infra* pp. 80-81.

<sup>5</sup>*Infra* p. 87.

<sup>6</sup>[Lys.] 20. 12; Plato *Apol.* 38B; *Laws* 855B; Ant. 2β. 9; for the offers of friends to provide money for escaping after condemnation to death, cf. Plato *Crito* 44B-45C.

## FRIENDLY PROSECUTIONS

The Athenian who was afraid that he might be prosecuted for some violation of the law could anticipate proceedings by having a friend or some one secured for the purpose bring a suit involving the very charge he feared. This "friendly prosecution" would either be dropped before it came to trial, or would be so laxly prosecuted as to insure an acquittal. In the former event, if subsequently a *bona fide* accuser appeared, the abandonment of the previous suit could be effectively referred to in addressing the jury. If the case had actually been tried and had resulted in an acquittal, the defendant could enter a *παραγραφή* to that effect and put a stop to further proceedings.<sup>1</sup>

An allusion to this practice is found in the speech *Against the Leptinean Law*.<sup>2</sup> Demosthenes affirms that Leptines has already been indicted three times for having introduced the measure and that in every case the proceedings have been abandoned. One of the prosecutors died before his case came before a court, or was persuaded by Leptines to drop the prosecution, or was not a *bona fide* accuser at all, but was acting as a mere tool for Leptines himself (*ἢ καὶ ὅλως ὑπὸ σοῦ παρεσκευάσθη*). The success of the expedient may be inferred from his having avoided conviction until the lapse of time freed him from personal liability.

It is not remarkable that no other instances are found in the comparatively small number of legal arguments extant.<sup>3</sup> In cases where the "friendly suit" had actually been brought into court and an acquittal had resulted, a speaker could hardly advert to the circumstance without an implied reflection on the court, which was avoided at Athens. Again, such friendly suits could not always be abandoned with impunity, on account of the stringent laws which forbade dropping criminal actions once they were begun.<sup>4</sup> It was a dangerous proceeding and could

<sup>1</sup>Pollux 8. 57; M. S. L. pp. 834, 837-38.

<sup>2</sup>Dem. 20. 145. The form of the action was a *γραφὴ παρανόμων*, but Leptines was no longer personally liable.

<sup>3</sup>A somewhat similar proceeding is hinted at in Dem. 23. 96, where the chance for collusion on the part of accusers in procuring an acquittal is mentioned: *εἴ τι γραφέν γ' ἢ καθυφέντων τῶν κατηγορῶν ἢ μὴ δυναθέντων μηδὲν διδάξει ἀπέφυγε, κτλ.*

<sup>4</sup>*Infra* p. 58. n. 6.

be more conveniently put into the hands of a professional sycophant than of a friend, especially as the former course would be less apt to arouse suspicion of the true character of the suit.

While the absence of any such office as that of public prosecutor left the door open for trickery of this sort, it is probable that friendly prosecutions were never as common in Athens as in Rome, where abuses of this kind made necessary the law providing for a *divinatio* to determine who was the proper accuser.<sup>1</sup>

While no instance in which a club resorted to this means of defeating justice is known, it is not unlikely that there were many cases in which it was available.

#### COUNTER-SUITS

A safer and more effective means of warding off attack than the friendly prosecution was the "counter-suit." This was a suit brought by a friend or hired agent against an accuser or one who was suspected of intending to bring an accusation. The charge would preferably be one which carried with it a civic disability in case of conviction, and which therefore would put a stop to the proceedings. Even if a conviction could not be secured, the counter-suit would cause embarrassment and might result in a compromise. So effective was this mode of procedure, and so easy for a man possessed of wealth or comrades, that it was one of the most common means of defense in litigation.

To the man who was familiar with the opportunities afforded by the Athenian judicial system, the counter-suit at once suggested itself as a most effective weapon against his opponents. Thus, when Crito, at the suggestion of the Xenophontic Socrates, won over Archdemus to be his friend and defender against the sycophants who were persecuting him, the latter knew immediately just what course to pursue. He began a public action against one of Crito's persecutors, hunted up all of his past misdeeds and knaveries, roused against him all of his enemies, and made it so uncomfortable for him that the man was quite willing to drop his case against Crito and compromise on whatever terms Archdemus was willing to allow. With his shrewd knowledge of the world and his familiarity with the tricks of litigation, he

<sup>1</sup>Cf. Humbert in *D. & S. Dict. Ant.* II. p. 319 (s. v. *divinatio*).



soon freed not only Crito but his friends as well from any annoyance on the part of the sycophants, by meeting the latter on their own ground.<sup>1</sup> The average Athenian was always ready to take advantage of this means for embarrassing an opponent. In the suit for the estate of Nicostratus, the advocate of Hagnon and Hagnotheus says: "Now if they (Hagnon and his brother) were litigiously inclined or like the rest of the citizens, Chariades perchance would not be suing for the money of Nicostratus, but would be defending himself on a capital charge."<sup>2</sup>

The leading case, which is also the first in point of time, is described in the speech of Antiphon *On the Choir Boy*, with an abundance and precision of detail seldom met with in the orators. The speaker is a wealthy Athenian who has served as choregus. While the members of the chorus were at his house, one of the boys, Diodotus, was given a draught to improve his voice and died soon afterward.<sup>3</sup> Philocrates, brother of the lad, is now prosecuting the speaker on an indictment *βουλεύσεως*.<sup>4</sup> The defendant reviews the circumstances as follows: He was engaged, at the time of the boy's death, in prosecuting Aristion, Philinus, Ampelinus, and the under-clerk of the thesmothetes by *eisangelia* for theft of the public funds; the *boule* had received the *eisangelia* and had handed over the matter to the thesmothetes, in whose court the first of the cases was set for trial on the third day after the boy's death.<sup>5</sup> At first the relatives had showed no disposition to impute blame to the choregus. But the second day after the death, when the funeral took place, they were persuaded by his enemies (Philinus *et al.*) and were preparing (*παρεσκευάζοντο*) to accuse him.<sup>6</sup> First Philocrates appeared before the court of the thesmothetes<sup>7</sup> and made a statement calculated to prejudice the dicasts, who were to sit in the first of the *eisangelia* cases on the

<sup>1</sup>Xen. *Mem.* 2. 9. 5-8.

<sup>2</sup>Isaeus 4. 30.

<sup>3</sup>Ant. 6. 11 ff.

<sup>4</sup>M.S.L. pp. 384 ff. Jebb (I. p. 61. n. 3) believes that Philocrates proceeded on a *γραφὴ φαρμάκων*. The case seems to have been tried before the Areopagus (cf. 9: *εἰς αὐτὸ τὸ πρᾶγμα καταγορεύειν*; 51; cf. Ar. *Cons. Ath.* 57. 3 with Sandys's note).

<sup>5</sup>Ant. 6. 21, 35, 12.

<sup>6</sup>*Ib.* 34.

<sup>7</sup>*Ib.* 21; cf. *infra* p. 73.

morrow, against him. On the next day,<sup>1</sup> just before the first of the *eisangelia* cases was called, the relatives of the lad went to the archon basileus, who had charge of prosecutions involving homicide,<sup>2</sup> to institute proceedings for homicide, and to give notice that the choregus was barred from all public gatherings. They were persuaded to do this by the defendants in the *eisangelia* cases, who had no hope of securing an acquittal by fair means, and who took this method of getting their accuser out of the way.<sup>3</sup> Inasmuch as the law provided that anyone against whom a charge of homicide was brought was to be barred from public gatherings, he would be prevented from appearing against them and they would probably be acquitted.<sup>4</sup> The unseemly haste displayed in taking this step was due to their unwillingness for even one of the defendants to be prosecuted.<sup>5</sup> Unfortunately for the success of their scheme, however, the archon basileus pointed out that the time remaining to his term of office was not sufficient for the necessary legal formalities.<sup>6</sup> The choregus appeared in the *eisangelia* cases and secured a conviction against every defendant. The relatives of the boy, since they were no longer able to aid Philinus and his associates and carry out their part of the bargain, thereupon approached the choregus and his friends and endeavored to effect a reconciliation. The offer was accepted in the presence of witnesses.<sup>7</sup> Some time after, when the choregus was engaged in the prosecution of other officials, the relatives again accepted a bribe, this time of thirty minas, to revive the proceedings and to embarrass him in his new prosecution. The present trial resulted.<sup>8</sup>

This case is particularly valuable for our investigation. It

<sup>1</sup>Reading  $\bar{\eta}$   $\eta$ ; cf. L. & S., s. v. *δοσραῖος*.

<sup>2</sup>Ar. Cons. Ath. 57. 2; cf. M.S.L. pp. 376 ff., esp. 379.

<sup>3</sup>Ant. 6. 34-35; cf. 38, 41. As the speaker had brought the proceedings and knew the case thoroughly, he was easily the most important of those interested in the prosecution and the one whom Philinus *et al.* most desired to be rid of (36).

<sup>4</sup>Ib. 36; cf. Pollux 8. 66 = *Télyf Corpus iuris attici* 829; Ar. Cons. Ath. 57. 2. The effect of this exclusion is shown in 45-46 and in Dem. 24. 105; cf. Ar. Cons. Ath. 57. 4; Soph. O. T. 236 ff.; Dem. 20. 158; Ant. 5. 10.

<sup>5</sup>Ib. 37.

<sup>6</sup>Ib. 38; cf. Gilbert Cons. Ant. p. 385. n. 2.

<sup>7</sup>Ib. 38-40.

<sup>8</sup>Ib. 49.

is reviewed so definitely and precisely that the account at once convinces one of its substantial truth, and it exhibits perfectly the inner workings of such schemes as this. The statement of the choregus that he is not the first against whom Philinus and his associates have employed this proceeding, but that they formerly used it against Lysistratus also, as the jurors themselves know, confirms our conclusion that the counter-suit was frequently made use of by litigants.<sup>1</sup>

In the famous case of *Demosthenes vs. Midias*, the defendant attempted to stifle the proceedings by exactly this same device. Aristarchus, the son of Moschus, was suspected of having slain Nicodemus of Aphidna, and the relatives of the deceased were taking steps to prosecute.<sup>2</sup> Midias, who had been spreading throughout the city a report that Demosthenes was in reality the murderer, went to the persons who were bringing the prosecution and offered them money to charge Demosthenes with the crime.<sup>3</sup> The attempt was in the main unsuccessful, though the embarrassment which it entailed may have been a factor in leading to a settlement.<sup>4</sup> This and other attacks of a similar nature, Demosthenes affirms, put him in such a plight that he was more likely to be punished himself for offenses he had never committed than to get justice for the wrongs he had suffered at the hands of Midias.<sup>5</sup> He asserts that these prosecutions were for the express purpose of "getting him out of the way" and thus putting a stop to his suit,<sup>6</sup> and states that this is the common practice of wealthy scoundrels when poor men attempt to get redress in the courts.<sup>7</sup>

An especially flagrant case is alluded to by Isocrates.<sup>8</sup> A kinsman of Callimachus and a certain Cratinus, in the course of a dispute regarding a piece of land, came to blows. Afterward,

<sup>1</sup>*Ib.* 36. On the political significance of this case, cf. *infra* p. 105. n. 5.

<sup>2</sup>Dem. 21. 104; cf. [107]. For the stories regarding Demosthenes' connection with this case, cf. Goodwin *Demosthenes against Midias* notes to 114, 117.

<sup>3</sup>Dem. 21. 104 ff.

<sup>4</sup>Dem. 21. 110; cf. *infra* p. 58. n. 6.

<sup>5</sup>*Ib.* 111.

<sup>6</sup>*Ib.* 105.

<sup>7</sup>*Ib.* 123.

<sup>8</sup>Isoc. 18. 52-53.

with the connivance of Callimachus, the former secreted a slave woman and then brought a charge of homicide against Cratinus. The latter, however, suspected the plot, and, having located the place where the woman was concealed, actually produced her in court and was unanimously acquitted.

While a charge of homicide was particularly adapted to this proceeding, as has been seen in the case of the choregus, there were others which were equally efficacious if a conviction was secured. In the course of the long litigation between Boeotus and Mantitheus,<sup>1</sup> the former, with the aid of Meneceles, leader of the club of sycophants to which he belonged, contrived against the latter an action for wounding with intent to kill. After having picked a quarrel and managed to come to blows with Mantitheus, Boeotus wounded himself slightly in the head and then accused Mantitheus before the Areopagus, in the hope of procuring his exile and the confiscation of his property.<sup>2</sup> The plot was exposed before the Areopagus by Euthydicus, a surgeon whom Boeotus had tried to persuade to make the incision. Aeschines, after the embassy of 346, when Timarchus was preparing to accuse him at his audit, got the latter out of the way by charging him with speaking in the public assemblies after having practiced certain forms of profligacy, thus securing his disfranchisement.<sup>3</sup> This put a stop to any action on the part of Timarchus, and may even have made it advisable for Demosthenes to postpone his prosecution of Aeschines, as Bury thinks.<sup>4</sup>

Timarchus himself and Hegesander, Aeschines alleges, had made use of a similar proceeding against Pittalacus, when the latter brought suits against them for assault, for when the case came on to be heard Hegesander claimed that Pittalacus was a slave and his own property.<sup>5</sup> Although Pittalacus was at the time rescued by a friend, he later decided that it was useless to proceed with his cases and dropped them.<sup>6</sup>

<sup>1</sup>Dem. 39, esp. 25; [Dem.] 40. For an account of the litigation between these two men, see the introductions of Sandys and Paley and of Kennedy to these speeches.

<sup>2</sup>[Dem.] 40. 32-33, 57. On the nature of the proceeding and the penalty involved, see M.S.L. pp. 386-87. For this club, cf. *infra* p. 95. n. 3.

<sup>3</sup>Dem. 19. 2, 283-86, 241; Aeschines 1.

<sup>4</sup>*Hist. of Greece* pp. 716-17.

<sup>5</sup>Aeschines 1. 62.

<sup>6</sup>*Ib.* 63 ff.



Nothing shows more clearly the extent to which the counter-suit was employed than the fact that the imputation of such trickery was a regular *topos* of defense. In *Epichares vs. Theocrines*, the speaker warns the jury that the defendant is going to advance this claim and say that the present case has been trumped up in order to prevent him from prosecuting the indictments he has brought against Demosthenes and Thucydides for proposing illegal measures. This, he continues, is no new plea, but has been urged by the defense in countless cases.<sup>1</sup>

These counter-suits did not always aim at a conviction, and were sometimes not even brought into court, but were instituted merely to influence public sentiment. Thus the indictment of Demosthenes by Euctemon for desertion of military duty, one of the counter-suits instigated by Midias when he was being prosecuted by the orator, was not allowed to come to trial. The sole reason for having the sycophant bring the accusation, says Demosthenes, was "that it might be placarded before the statues and all might see, 'Euctemon of Lusia has indicted Demosthenes of Paeania for desertion of post.'"<sup>2</sup> Euctemon failed to proceed with the case and was disfranchised.<sup>3</sup>

A plaintiff also, if he did not have a good case and saw that the defendant proposed to stand his ground, might use this means to get his opponent out of the way before the trial. Thus Callias, when he perceived that Andocides was preparing to fight his case and stood a good chance of acquittal, accused him of having placed a suppliant bough upon the altar at Eleusis. Had this been proved, Andocides would have been put to death without trial, or would have been compelled to flee Attica and lose his case by default.<sup>4</sup>

<sup>1</sup>[Dem.] 58. 22-3, 36. There may have been some truth in this defense. Epichares may have been chosen as the agent in the prosecution of Theocrines on account of his personal enmity toward the man who caused the conviction of his father (1). When the object of the suit had been gained and the indictments against Demosthenes and Thucydides dropped, the two politicians and their adherents left him to shift for himself, he tells us (4, 42). See also the cases cited by Isoc. 17. 12 and [Dem.] 53. 14.

<sup>2</sup>Dem. 21. 103 (Kennedy).

<sup>3</sup>*Loc. cit.*

<sup>4</sup>And. 1. 121. Callias had encouraged the prosecutors of Andocides in the first place in order to harass him in a suit which was then pending for the hand of an heiress (117 ff.).

The clubs must have employed the counter-suit frequently, for it is inconceivable that organizations whose purpose was mutual support in lawsuits would have neglected so effective a weapon and one which was in such common use. While in some cases associates could give their personal services, in others it would be more satisfactory to hire a sycophant or to influence an enemy of the opponent to bring the suit. The contributions of money made by clubs could be used for this purpose, and the services of the members as agents would be valuable. We have seen the way in which Meneeles, one of the leaders of the club to which Boeotus belonged, aided his associate in the counter-suit by which the latter sought to terminate his litigation with Mantitheus Midias, who was notorious for his club affiliations, relied particularly on the counter-suit, and it is a justifiable inference that he was assisted in this as in other kinds of legal trickery by his associates.<sup>1</sup> While we cannot affirm that Philinus and his friends, who employed this proceeding on a number of occasions, constituted a club in the strict sense of the word, we have in them a definite, recognized group of men who acted in concert during an appreciable period of time.<sup>2</sup> Such a clique, similar in purpose and manner of working to the clubs, lacks only the precise appellation.

#### ANTIDOSIS

The use of antidosis to check prosecutions was very similar to the counter-suit and under certain circumstances was quite as effective. The Athenian who was being sued on claims due an estate might get one of his friends who had been selected for a liturgy to challenge the plaintiff to an exchange of property.

In *Demosthenes vs. Aphobus*, the defendant employed this ruse in an endeavor to put a stop to the suit. Thrasylochus of Anagyrus and his brother Midias were the friends charged with the actual execution of the plan. Demosthenes gives the following account of the proceeding: "When I was just bringing on my cause against them, they procured an exchange of estates to be tendered me; by accepting which (they thought) I should

<sup>1</sup>Cf. *supra* p. 23 . n. 2.

<sup>2</sup>Ant. 6. 36.

lose my right of action, for it would be transferred to my assignee; or else I should serve the office with scanty means and be totally ruined. Thrasylochus of Anagyrus was the person who performed this piece of service for them. I, without considering the consequences, accepted the exchange, but refused to give possession, hoping to obtain a legal decision; but failing in this, and time pressing, rather than abandon the suit, I mortgaged my house and property and paid the public demand, being anxious to bring this cause to a hearing before you."<sup>1</sup> In the speech *Against Midias*, Demosthenes further alleges that the antidosis was proffered him only four or five days previous to the date set for the hearing of his case against Aphobus, and that Thrasylochus actually gave a release in the suits on the strength of the acceptance.<sup>2</sup>

To pass over certain disputed points which are not essential to the present investigation,<sup>3</sup> the procedure seems to have been as follows: The antidosis was tendered by Thrasylochus for the express purpose of aiding Aphobus, since the challenge would compel Demosthenes either to abandon his suits against the guardians utterly by accepting the exchange,<sup>4</sup> or, by choosing the liturgy, to undergo great financial embarrassment. The time of the proposal, the eve of the trial, was deliberately selected in order to deprive Demosthenes of the relief afforded by an adjudication (*διαδικασία*). Demosthenes at first accepted, no doubt verbally, but upon learning that his suits would go with the estate he refused to give possession and to proceed with the exchange,<sup>5</sup> hoping to obtain an adjudication. When it was clear that there was not time for this, he borrowed money and

<sup>1</sup>Dem. 28. 17 (Kennedy).

<sup>2</sup>Dem. 21. 78-79.

<sup>3</sup>The theory that in the fourth century antidosis could not involve an actual exchange of property (cf. Dittenberger *Ueber den Vermögens-ausch und die Trierarchie des Demosthenes* [Rudolstadt: 1872]; Beauchet *Histoire du droit privé de la République athénienne* [Paris: 1897] III. pp. 722-37) does not admit of a consistent interpretation of these and other passages, as has been shown by Goligher ("Studies in Attic Law" *Fermathena* XIV. pp. 481-515), whose conclusions I accept in the main. Kennedy's summary of this case (IV. p. 116. n. 1) is of great value.

<sup>4</sup>That suits connected with estates passed with the properties in an exchange is Gilbert's inference from Lys. 3. 20: *δικας ιδίας . . . ἐξ ἀντιδόσεως* *Cons. Ant.* p. 362. n. 4).

<sup>5</sup>Goligher pp. 510-11; Kennedy *loc. cit.*

paid the liturgy. In the meanwhile, Thrasylochus had actually given releases in the suits on the strength of the verbal agreement.<sup>1</sup>

The case shows how effective a weapon antidosis was in dealing with suits which were brought on behalf of an estate. The essential strength of the device lay in the fact that the proposal to exchange was not made until the very eve of the trial, when there was no time for an adjudication, and the challenged party was compelled to choose between abandoning his suit or discharging the liturgy. Even in suits which were not concerned with estates and which would not be transferred by an antidosis, the challenge to an exchange would have its effect, for it would necessitate an adjudication and would embarrass the litigant by plunging him into additional difficulties at the time of the trial. This manoeuvre could not be effective in every case, nor could it be often employed with success, but the law, although generally neglected, could be evoked when opportunity offered.

There is no direct evidence that clubs were concerned in this case. But the fact that Midias was the prime mover in the scheme<sup>2</sup> strongly suggests that his clubs were concerned. It is unlikely that either he or his brother would have lent his services for hire, since they were men of wealth and standing. But Aphobus or one of the other guardians of Demosthenes may have belonged to the clubs of wealthy men which assisted Midias,<sup>3</sup> and the latter may have been fulfilling his obligation as associate when he performed this service.

#### CREATING SENTIMENT

Friends and associates could render a litigant valuable service by creating sentiment in his favor prior to the trial of his case. This was accomplished by circulating reports favorable to him or derogatory to his opponent, reports which might deal directly with the facts in the case at issue, or might have to do with the characters and general standing of the litigants.<sup>4</sup> In the com-

<sup>1</sup>These releases were of course invalidated by the failure to carry out the antidosis.

<sup>2</sup>Dem. 21. 78 *fin.*

<sup>3</sup>Cf. *supra* p. 23. n. 2.

<sup>4</sup>In addition to the cases discussed below, cf. Isoc. 18. 9; Lys. 4. 9; Dem. 22. 59.



paratively small community of Athenian citizens, where a jury constituted an appreciable percentage of the enfranchised population, such tactics would have far greater effect than they possibly could in our great modern cities.<sup>1</sup>

Since the clubs would be most convenient agencies for the dissemination of such reports, it is *a priori* likely that this was one of the ways in which they aided members. In *Ariston vs. Conon*, the plaintiff hints at such a proceeding: "I wish to tell you beforehand what I have learned Conon is prepared to say," he begins, and then proceeds to show that the defendant intends to turn the matter at issue into a jest, and to allege that the assault in the case was nothing more serious than a drunken frolic, in which the plaintiff was as much to blame as the defendant and his sons.<sup>2</sup> It is probable that the associates who assisted Conon in his defense and testified in his favor<sup>3</sup> spared no effort to give the affair this innocent aspect in their conversation with other citizens, while at the same time they attacked the character and personal disposition of Ariston and members of his family.<sup>4</sup>

In *Demosthenes vs. Midias*, it is charged that the defendant "went around through the market-place" spreading a report that Demosthenes was in reality the murderer of Nicodemus, whom Aristarchus, the son of Moschus, was charged with having slain.<sup>5</sup> In this particular passage no mention is made of Midias' associates, for the policy of the speech throughout is to hold Midias himself personally responsible for every count in the charge and to keep him individually before the jury. But Midias alone could not have disseminated these stories effectively, and it must be believed that the clubs which were aiding him in the trial assisted.<sup>6</sup>

In *Euxitheus vs. Eubulides*, the plaintiff charges that Eubulides, aided by the members of his club and some others, enemies of

<sup>1</sup>Sentiment may often be aroused by the press in a modern community to such an extent that the impartiality of a court is seriously affected. It is in part to preclude the possibility of such interference that a change of venue is provided for. It must be kept in mind that according to the Athenian theory of the juror's duty a knowledge of the facts and even a prejudice in favor of one or the other of the parties to a suit was permissible.

<sup>2</sup>Dem. 54. 13-15.

<sup>3</sup>Cf. *supra* p. 25. n. 1; *infra* pp. 78-79.

<sup>4</sup>Dem. 54. 14: ἡμᾶς δὲ . . . πικροῦς.

<sup>5</sup>Dem. 21. 104; cf. *supra* p. 51.

<sup>6</sup>Cf. *supra* p. 23. n. 2.

himself,<sup>1</sup> stole a number of shields which he had dedicated and chiseled out decrees in his honor. Then they went about the city circulating a report that he himself had done these things in order that he might charge them upon his opponents and arouse a prejudice against them.<sup>2</sup> Such practices were perhaps not common, but it is unlikely that the speaker would have dared to bring this accusation without some foundation in fact.

#### DISSUASION OF ACCUSERS

A common method of avoiding the dangers of litigation was to dissuade an intending accuser from bringing his suit, or, in case the proceedings had actually been begun, to induce him to drop the prosecution.

The tender of a sum of money was frequently the means employed in approaching an accuser. This is indicated as well by the existence of sycophancy as a recognized profession,<sup>3</sup> as by constant allegations in the orators. For example, Andocides was charged with having for a financial consideration dropped his prosecution of Archippus on a charge of impiety.<sup>4</sup> Aeschines accused Demosthenes of having given Nicodemus of Aphidna a sum of money in order to escape conviction on the indictment for desertion of post which the latter had brought,<sup>5</sup> and on another occasion taunted him with having himself dropped his case against Midias for the comparatively small sum of thirty minas.<sup>6</sup> The

<sup>1</sup>Cf. *supra* p. 23. n. 3.

<sup>2</sup>Dem. 57. 64.

<sup>3</sup>Xen. *Mem.* 2. 9. 1; for the "cheapness" of sycophants, cf. Plato *Crito* 45AB; Isoc. 18. 10, 14.

<sup>4</sup>[Lys.] 6. 11-12.

<sup>5</sup>Aeschines 2. 148.

<sup>6</sup>Aeschines 3. 52; cf. Plut. *Dem.* 12. Goodwin (*Midias* pp. 135-36) accepts the view that Demosthenes did actually compromise his case against Midias, and discusses the circumstances which made such a course advisable. Kennedy (III. p. 59) says that if the case was compromised "we must suppose that it was not forbidden by the Athenian law to accept compensation, and that this was not one of the cases in which the dropping of a prosecution was attended with disfranchisement." The Athenian law punished the man who dropped a criminal prosecution or other public case with a heavy fine and partial atimia (cf. [Dem.] 58. 5-6, 10 ff.; Lys. *fr. or. Against Antigenes*=Lex. Cant. 669. 20; Dem. 21. 103; also the law, of doubtful authenticity, quoted in Dem. 21. 47). There are, however, cases like that of *Demosthenes vs. Midias* which indicate that under certain circumstances and with

extent to which bribery was employed in getting rid of accusers is shown by a statement in the speech *For Polystratus*.<sup>1</sup> The speaker affirms that the real culprits bought off their accusers, and that innocent men like Polystratus who did not pay were made to suffer. "The real wrongdoers the accusers cunningly shield in consideration of bribes, but those from whom they receive no money they cause to appear in the light of evil-doers.

\* \* \* And men who have been evil all their lives are 'white-

the assent of the proper authorities proceedings which had been instituted might be withdrawn (*ἀναιρεῖσθαι*), and others which point to general neglect of the law (cf. M.S.L. p. 915.). The suggestion of M.S.L., that it was left to the magistrate to enforce the penalty, and that the neglect of the law was the result of inactivity on the part of officials, seems hardly probable. I am inclined to believe that this, like the great majority of Athenian laws, depended for its enforcement upon the interest of individuals in particular cases (cf. *infra* p. 98), and that some person concerned would have to initiate the prosecution, as in *Epichares vs. Theocrines*, where one of the charges is that Theocrines has instituted legal proceedings and then failed to prosecute them (cf. [Dem.] 58. 5 ff.). Obviously a defendant who had just made a settlement and his friends would not desire the enforcement of the penalty, and there would often be no one who was sufficiently interested to bring a prosecution at the time, with the result that the law was seldom invoked and fell into disuse. It seems to have escaped notice that there were schemes by which the law could be safely evaded, and proceedings dropped without legal sanction and without trusting to the chances of escaping notice. Such an evasion is described by the plaintiff in *Epichares vs. Theocrines* ([Dem.] 58. 43), where the defendant is charged with having dropped an action against Demosthenes by the following device: When the case was called, some one made affidavit that Demosthenes was ill and unable to attend, although this was not the case, and the trial was postponed. Theocrines on his side let the affidavit pass without question, and neither made a counter-affidavit nor later gave notice of trial (*καὶ οὔτε τὸτ' ἀνθρωπομόσατ' οἴθ' ὕστερον ἐπήγγελκεν*), thus neatly and safely allowing the case to drop. Epichares alleges that this is no new device, but that such evasions are constantly resorted to by men of the defendant's stamp. It would appear, therefore, that it was comparatively easy to drop legal proceedings, notwithstanding the law. By no means all cases, however, are to be ascribed to sycophancy or sharp practice. Many *bona fide* accusers no doubt saw fit, for one reason or another, to compromise with the defendants in criminal cases, and such an adjustment of difficulties must have been tacitly consented to by public opinion, even if it had no status in law. (On the whole subject of discontinuing suits, cf. M.S.L. pp. 912 ff.; Caillemer in *D. & S. Dict. Ant.*, s. v. *graphe*).

<sup>1</sup>[Lys.] 20. 7, 10. *Ἐκκλέπτουσιν* is interesting, for it at once suggests the scheme of Crito for getting Socrates away after his conviction (Plato *Crito* 44E: *ὡς σὲ ἐθέλυε ἐκκλέψασιν*, which is explained by 45A: *καὶ γὰρ οὐδὲ πολὺ τὰργύριον ἔστιν, ὃ θέλουσι λαβόντες τινὲς σώσαι σε καὶ ἐξαγαγεῖν ἐνθένδε*; cf. Xen. *Apol.* 23; Plut. *De genio Soc.* 581C). Polystratus is on trial for his alleged connection with the Four Hundred, but the precise charge is uncertain (cf. Harp., s. v. Polystratus). His son delivers the present speech. The allusion is to the previous condemnation of Polystratus when he was accused at his audit.

washed' in the logisterium, having persuaded their accusers." In the speech *Against Philocrates*, who is accused of concealing the confiscated property of Ergoteles, the speaker intimates that the defendant could not have got rid of the other accusers if he had not had in his possession much of Ergoteles' wealth.<sup>1</sup> When Ergoteles himself was on trial the year before for the embezzlement of public funds, three talents were said to have been pledged to the orators if they would "save him and not accuse him."<sup>2</sup> This practice on the part of corrupt officials, of using a portion of the proceeds of their maladministration to buy off accusers, is amusingly parodied by Aristophanes in the *Knights*.<sup>3</sup> Agoracritus accuses Cleon of having ten ill-gotten talents from Potidaea, and the latter promptly offers him one talent to keep silence.

Where a financial consideration did not suffice or was not convenient, pressure could be brought to bear in other ways. The accuser might be persuaded, or coercion and intimidation might be employed. We are told by Demosthenes that Leptines persuaded one of three men who had indicted him for introducing an illegal measure to drop the prosecution.<sup>4</sup> Whether bribery was the means employed, or whether the accuser was made to fear the influence of Leptines and his political adherents, is not stated. Aeschines was charged by Demosthenes with having successfully made use of threats to prevent a number of citizens, who intended to attack him at his audit after the embassy of 346, from bringing their accusations.<sup>5</sup>

In the speech *Against Midias*, Demosthenes repeatedly refers to attempts made by friends and associates of Midias to have him drop the prosecution.<sup>6</sup> He was on several occasions approached with entreaties, offers of bribes, or threats, by friends, who were, in at least one instance, members of the clubs which

<sup>1</sup>Lys. 29. 1. Ergoteles was brought to trial in 389, on a charge of embezzling funds levied from the Asiatic cities, and was put to death (2; cf. Dem. 19. 180) and his property confiscated. The preceding oration (*Against Ergoteles*) was delivered at that trial. The year following, Philocrates was accused of concealing property of Ergoteles, and this speech was delivered by one of the accusers.

<sup>2</sup>Lys. 29. 6.

<sup>3</sup>438-39.

<sup>4</sup>Dem. 20. 145.

<sup>5</sup>Dem. 19. 2.

<sup>6</sup>21. 3, 151, 215. For the way in which friends acted as agents in these transactions, cf. Isoc. 18. 9 ff.



were aiding Midias.<sup>1</sup> The success of these tactics is indicated by the fact that he actually did drop the suit.<sup>2</sup>

The members of the dicing club to which Hegesander and Timarchus belonged, and of which the former appears to have been the leader, endeavored to persuade Pittalacus, whom they had assaulted and outraged, not to bring suit against Timarchus and Hegesander for the attack.<sup>3</sup>

The most striking attempt to intimidate a man and prevent him from giving an information or instituting a suit originated with a notorious political club, and is described by Andocides in the speech *On the Mysteries*.<sup>4</sup> After the members of the club, at the instigation of Euphiletus, had defaced the Hermae, they were in great fear that Andocides would inform against them. Accordingly Euphiletus and Meletus visited him and warned him to keep silent, saying that if he saw fit to hold his peace and keep the matter secret they would be his friends and comrades as before, but that if he did not he would find in them enemies more to be feared than any friends he might gain by such a course were to be valued.

The clubs were particularly qualified to aid in persuading or intimidating an accuser, and the cases in which the clubs of Midias and Andocides were engaged show how they worked. A friend of the defendant might attempt to dissuade an accuser, but the associate had all the influence of his club behind him and could invoke it in his threats, as did Euphiletus and Meletus. The contributions of money made by associates could of course be used in buying off accusers when occasion offered.

#### ASSASSINATION

Actual violence was at times employed against an opponent when more peaceable measures proved unavailing, and assassina-

<sup>1</sup>*Ib.* 213-6; cf. *supra* p. 23. n. 2.

<sup>2</sup>Cf. *supra* p. 58. n. 6.

<sup>3</sup>Aeschines 1. 60 ff; cf. *supra* p. 26. n. 3. This club, of which the chief amusements were dicing and cock-fighting, seems to have met at the house of Pittalacus, prior to the quarrel between Hegesander and Pittalacus, just as the club of Conon met at the shop of Pamphilus (cf. *supra* p. 26. n. 5; Sandys's note to Dem. 54. 7).

<sup>4</sup>And. 1. 63 ff.; cf. *supra* p. 24. n. 4.

tion was not unknown as a means of getting rid of an accuser, or an opponent who had a strong case.

In the first tetralogy of Antiphon,<sup>1</sup> the presence of this motive for the assassination is made the strongest link in the chain of circumstantial evidence developed by the hypothetical accuser. The situation is worked out logically and in detail. The defendant and the deceased, who had been enemies for many years, had often engaged in litigation, in which the former was invariably worsted. Quite recently he had been indicted by the deceased on a charge of embezzling sacred funds; he was conscious of his guilt and knew the influence of his accuser; there was no hope of acquittal. Fired by a desire for revenge and rendered frantic by the fear of conviction, he murdered his enemy, hoping that he would escape detection and that the crime would result in his acquittal, since the death of his accuser would leave no one to prosecute the charge, and the case would go by default. It is worthy of note that the hypothetical defendant in his reply does not assail the general credibility of the charge, which would have been his strongest line of argument had murder from such reasons been unknown at Athens. Instead he endeavors to show that the circumstances in the particular case do not indicate this motive for the crime.<sup>2</sup> It is striking that in real homicide cases we find exactly the same argument. Euphiletus, on trial for the murder of Eratosthenes, discusses the different motives which might have actuated him and shows that they did not apply in his case: "Neither had he (Eratosthenes) brought vexatious indictments against me, nor had he attempted to procure my exile from the city, nor was I engaged in civil litigation with him, nor was he in the possession of knowledge of any wrong which I had done, on account of which I should wish to kill him for fear that he might communicate it to others."<sup>3</sup>

An assassination of the kind described in these pleas is alluded to in the speech *On the Estate of Ciron*.<sup>4</sup> Diocles, the brother-

<sup>1</sup>Ant. 2α. 5. ff.

<sup>2</sup>Ib. 2β. 9.

<sup>3</sup>Lys. 1. 44.

<sup>4</sup>Isaeus 8. 40 ff. The statement of Harpocration (s. v. *κατωκοδόμησεν*) that Diocles also killed the husband of the eldest sister seems to be the result of confusion. The passage in which Diocles' treatment of the eldest sister and her husband is described offers many difficulties (cf. Wyse's note to 8. 41. 3).

in-law of Ciron, had got control of his step-father's estate by alleging a testamentary adoption, and had defrauded his three half-sisters of their rightful property. When the husband of the second sister put in a claim for her share, Diocles procured his assassination at the hands of a slave. He then sent the slave from the country and charged the widow of the slain man with the murder. The speaker does not say whether litigation had actually been begun, or whether a suit was merely threatened, but makes it clear that the assassination was for the purpose of getting rid of the claimant. This object was attained, for Diocles remained in possession of his ill-gotten wealth.

In *Apollodorus vs. Nicostratus*, the plaintiff describes an attempt at such a murder of which he was himself the object. He had indicted Arethusius, the brother of Nicostratus, for false-citation, the anacrisis had been held, and the case was about to come to a hearing. Arethusius lay in wait for him at night near a stone-quarry, by which he passed returning from the Piraeus, and when he came by assaulted him, first striking him with his fist, and then attempting to throw him into the quarry. The attempt would have been successful had not some persons been attracted by Apollodorus' cries and come to his aid.<sup>1</sup> The motive here was undoubtedly the same as in the other cases, for the attempt at murder took place but a few days before the trial, in which Arethusius was convicted and narrowly escaped a sentence of death.

It is probable that assassination was only resorted to when all other means failed, by desperate men like Arethusius, or by utterly depraved characters such as Diocles is said to have been. But there can be no doubt that it was occasionally employed to get litigants out of the way. There is no mention of clubs in these cases, although what is apparently a temporary cabal is mentioned in the case of Arethusius.<sup>2</sup> However, there can be little doubt that certain types of clubs would lend themselves to such crimes, since clubs were responsible for many political assassinations,<sup>3</sup> and, indeed, the plaintiff in *Mantitheus vs. Bocotus* intimates that the defendant and his associates would not hesitate to poison him to get him out of their way.<sup>4</sup> Associates would

<sup>1</sup>[Dem.] 53. 17.

<sup>2</sup>*Ib.* 14.

<sup>3</sup>Cf. *infra* pp. 107 ff.

<sup>4</sup>[Dem.] 40. 57; on this club, cf. *infra* p. 95. n. 3.

be the most trustworthy accomplices, for they would be unlikely to betray a comrade.

#### PLEADING AT THE PROBOLE

In cases where an indictment was preceded by a probole in the assembly,<sup>1</sup> friends of both parties would address the body and endeavor to influence the vote by their pleas.

In *Demosthenes vs. Midias*, the only case involving probole in which an argument has been preserved, this is admirably illustrated. The plaintiff asserts that when the probole came up in the ecclesia, a number of wealthy friends of Midias, among them Neoptolemus, Mnesarchides and Philippides, members of the clubs which were assisting him, besought the ecclesiasts not to find against him, and even went so far as to address their entreaties to Demosthenes himself in the presence of the ecclesia.<sup>2</sup> But in this instance such efforts were of no avail; it was impossible to stem the torrent of public indignation which Demosthenes had aroused, and the probole was voted.

It is interesting that this, the only account of a probole, shows the members of Midias' clubs appearing in his behalf.<sup>3</sup> This service was very much like that which associates rendered when they appeared as advocates,<sup>4</sup> but the debate was of course subject to the rules of order which prevailed in the assembly.

#### INFLUENCE UPON THE JURY<sup>5</sup>

An expedient which would naturally suggest itself to the litigant who desired to manipulate the machinery of justice was

<sup>1</sup>The aim of the probole was merely to secure a vote of the assembly in favor of the prosecutor's case; if this was accomplished, the matter went to the regular heliastic tribunals. The proceeding was limited to a few classes of offenses: the violation of certain festivals, sycophancy, and deceit practiced upon the demos (cf. Lipsius *Das attische Recht* [Leipzig: 1905-1912] pp. 211 ff.; Goodwin *Midias* pp. 158 ff.).

<sup>2</sup>Dem. 21. 213 ff., esp. 214.

<sup>3</sup>Cf. *supra* p. 23. n. 2.

<sup>4</sup>Cf. *infra* pp. 85 ff.

<sup>5</sup>The practices described in the preceding pages have in general aimed at keeping cases from coming to a hearing; from this point on will be considered the opportunities for concerted action after cases came before a court.



the persuasion or corruption of the jurors to whom his case was committed. Although this must have been difficult of accomplishment under the Athenian system of large popular juries, a number of instances testify to its feasibility.

Obviously the most satisfactory way to influence the verdict of the court would be so to manipulate the selection of dicasts as to "pack" the jury with men who were already favorably inclined toward the defendant<sup>1</sup> or had been won over by his supporters. But this would seem to have been a well-nigh hopeless task, both under the fifth century court-system and under that which existed after the archonship of Euclides.<sup>2</sup> The only case of a "packed" jury of which we have any record formed a part of the oligarchic intrigues which placed the Thirty in power, when the demagogue Cleophon was condemned and executed on a charge of desertion of post. After the battle of Aegospotami, Cleophon, who had very vigorously opposed the peace with Sparta which provided for the destruction of part of the Long Walls, was marked for "removal" by the oligarchs in the boule.<sup>3</sup> During the absence of Theramenes, a charge of desertion of post was trumped up against Cleophon, a jury was "packed" with

<sup>1</sup>These expedients were of course available for a plaintiff as well as for a defendant; it happens that the cases to be considered are instances in which a defendant is seeking to avoid conviction.

<sup>2</sup>In any discussion of the bribery or influencing of juries, it is necessary to keep in mind the changes in the heliastic system which were introduced from time to time. The manner of drawing the dicasteries was entirely changed in the archonship of Euclides, and the new system again was modified before the time of the procedure described by Aristotle. It will be sufficient for our purposes to bear in mind the chief distinctions between the fifth century system and the arrangements which prevailed after the archonship of Euclides. In the fifth century, the heliæa consisted of 6,000 dicasts, chosen by lot, and divided into ten sections of 600 each (or, as Gilbert believes, 500 each with a reserve of 1,000); each section seems to have been allotted for the entire year to a particular magistrate, who presided in a particular court. After Euclides, all qualified citizens who applied for service were enrolled as dicasts, and the sections were not assigned to particular courts until the day of trial, making bribery and canvassing much more difficult. Subsequently the system was made still more complicated, and the intricate procedure described by Aristotle (*Cons. Ath.* 63 ff.) was instituted. The sections apparently were retained, but were no longer kept intact in filling the different courts, and the most elaborate precautions were observed at every stage of the drawing. On this subject, cf. Gilbert *Cons. Ant.* pp. 391 ff.; Lipsius *A. R.* pp. 134 ff.; Caillemer, in *D. & S. Dict. Ant.* II. pp. 187 ff. (s. v. *δικαστῆς*).

<sup>3</sup>Lys. 13. 7-12; 30. 10-12.

partisans of the oligarchy, and he was condemned and executed.<sup>1</sup> The way in which the jury was secured is described by Lysias in the speech *Against Nicomachus*. About this time, it was decided that Athens was to be governed by the "ancestral constitution," and Nicomachus, a man of unscrupulous character, was appointed commissioner to write out the laws of Solon.<sup>2</sup> The oligarchic leaders, perceiving that a popular jury would never convict Cleophon, persuaded Nicomachus to produce a fictitious "law of Solon" by the terms of which the senate, which was strongly oligarchic, would sit on the jury which tried the case. Nicomachus, who had no hesitation about altering the laws if offered a reasonable bribe, produced the desired law on the day of the trial. The jury was thus made up for the most part of oligarchic sympathizers, and Cleophon was condemned to death.<sup>3</sup>

Such a proceeding could hardly have been possible except at times of constitutional crises, when some faction or clique was in complete control of the machinery of government and could set aside law and precedent, as in the instance described. Failing the possession of evidence that the drawing of juries ordinarily afforded opportunity for fraudulent practice, it must be assumed that those who endeavored to tamper with dicasts were in general limited to the chances of corrupting or persuading the members of legally drawn juries.

In Athens were many unscrupulous and venal citizens,<sup>4</sup> and bribery offered an effective means of winning over such men. The first instance of the bribery of an Athenian court, according to Aristotle, took place when Anytus was indicted for treason after his unsuccessful expedition to Pylos in 409. By bribing the members of the jury which sat in the case, he secured an acquittal.<sup>5</sup>

If, as Aristotle states, this was really the first case of jury-bribing, the example of Anytus must have been speedily followed

<sup>1</sup>*Ib.* 13. 12: δικαστήριον παρασκευάσαντες καὶ εἰσελθόντες οἱ βουλόμενοι ὀλιγαρχίαν καταστήσασθαι, κτλ.

<sup>2</sup>*Ib.* 30. 2.

<sup>3</sup>*Ib.* 30. 10-12. The boule of that year was made up for the most part of oligarchs (*Lys.* 13. 20; 30. 14).

<sup>4</sup>*Cf.* *Leisi* pp. 114 ff., esp. 116.

<sup>5</sup>*Cons. Ath.* 27. 5; *cf.* *Diod. Sic.* 13. 64; *Plut. Cor.* 14; *Harp.*, s. v. δεκάξειν; *Bekker Anec. Gr.* 211. 31; 236. 6 (where there is confusion, as in *Et. Mag.*, s. v. δεκάξειν).

and to a considerable extent. Isocrates, in a speech delivered probably in 402,<sup>1</sup> tells of a certain Xenotimus who, in addition to other grave offenses against law and order, bribes juries.<sup>2</sup> The simple phrase which the speaker employs makes it appear that at this time the word *δεκάζειν* and the action which it described were very familiar to the ordinary Athenian audience. This could hardly have been the case if the practice had begun as late as 409. However, the word *συνδεκάζειν*, identical in meaning, is used of jurors in the earliest specimen of Attic prose, the treatise of the Pseudo-Xenophon on the *Polity of the Athenians*, which is generally assigned to a date between 430 and 424.<sup>3</sup> The author, in his discussion of the court system of Athens, says that if the number of dicasts in each court is decreased it will be easier to make use of sharp practices and to employ bribery with the smaller juries.<sup>4</sup> This shows pretty clearly the incorrectness of the traditional point of view, based upon the statement of Aristotle. The very fact that it was found necessary, when the constitution was revised in the archonship of Euclides, to install a new system of jury selection is in itself convincing evidence that bribery and other forms of tampering with juries must have been practiced to an alarming extent during the fifth century.<sup>5</sup>

The improved system, however, failed to do away with the evil, for during the fourth century bribery seems to have been of common occurrence. The serious apprehension which this condition aroused is shown by the strict laws which were enacted against the giving or receiving of bribes and by the extreme penalties provided for offenders in case of conviction.<sup>6</sup> At the

<sup>1</sup>Jebb II. p. 235. n. 1.

<sup>2</sup>Isoc. 18. 11.

<sup>3</sup>Busolt III. pp. 609 ff.

<sup>4</sup>[Xen.] *Pol. Ath.* 3. 7. *συνδεκάζειν* is generally accepted, on the suggestion of Thieme, for the reading *συνδικάζειν*, which is manifestly corrupt.

<sup>5</sup>Aristotle, in his account of the later jury system, repeatedly calls attention to the fact that the object in view is to prevent the exertion of improper influence upon dicasts and officials (Cols. 31. 14-15, 32 ff.; 32. 5 ff.; 33. 2-4, 12 ff., 20 ff.; cf. 34. 33 ff.; 35. 2. Cf. Lipsius *A. R. I.* p. 139; Gilbert *Cons. Ant.* p. 395).

<sup>6</sup>The second speech *Against Stephanus*, probably delivered about 351 (See Sandys and Paley II. pp. xxxviii ff. It is now generally held that this speech, while not the work of Demosthenes, was written by a contemporary, possibly by Apollodorus himself; the doubt in regard to the precise authorship does not affect its value as a contemporary

trial of Ergocles for the embezzlement of public funds, which came before the court probably in 390 or 389, the defendant and his friends, if we may believe the accuser of Philocrates, openly boasted of having bribed a large number of dicasts.<sup>1</sup> Thirty-three years later, Isocrates states that bribery is practiced in the most open manner and by the most influential men at Athens.<sup>2</sup> And in 346/5, Aeschines mentions prosecutions against a number of men who are charged with having undertaken to bribe "the assembly and the courts as well, just as Nicostratus does even now." Some of these cases have been tried and have resulted in the conviction and execution of the defendants; others

document.), contains the following law, which includes a specific provision in regard to the bribing of juries: "If anyone enter into a combination or join in bribing the Heliaea or any of the courts at Athens or the senate, giving or receiving money for corrupt purposes, or organize a club for the subversion of the democracy, or, in the capacity of advocate, receive money in private or public cases, for any such act an indictment shall lie before the thesmothetes." ([Dem.] 46. 26.) Cf. the heliastic oath, as quoted by Demosthenes (24. 149-51). This law is regarded as undoubtedly genuine by Drerup ("Ueber die bei den attischen Rednern eingelegten Urkunden" *Jahrb. f. kl. Phil., Supplbd.* XXIV. (1898) pp. 304-305), by Staeker (*De litis instrumentis, etc.* pp. 28 ff.) and by Blass (crit. note to [Dem.] 46. 8). Other laws are quoted at different times which have to do with bribery, but do not make especial mention of jury bribing (Hyp. *Eux.* 7-8, 30; Dem. 21. [113]). The man who offered or gave a bribe to any official was liable to an indictment *δεκασιμῶν*, while the one who received it was indicted *δάρων* or *δαροδοκίας* (Cf. M.S.L. pp. 444 ff.; Pollux 8. 42; Harp. s. v. *δεκάσιμων*). Various penalties are cited by the orators: Death (Isoc. 8. 50; Aeschines 1. 86-87; Lys. 27. 7-8; Dem. 9. 37; Din. 2. 4, 16, 20; 3. 5), fine (Din. 2. 17; 1. 60; Plut. *Arist.* 26; Vit. X Orat. *Dem.* 9), confiscation of property (Lys. 21. 11, 25; Din. 3. 5), confiscation with atimia (Lys. 21. 25), atimia (Aeschines 3. 232; Dem. 21. 113; And. 1. 74). Different punishments are mentioned by the same orator, sometimes in the course of a single speech. It is therefore difficult to say with certainty just what the penalty was, or whether any distinction was made between the bribery of jurors and ecclesiasts and of other officials, as Thonissen (*Le droit pénal* p. 216) thinks was the case. According to M.S.L. (p. 445), the penalty was determined by the jury, and the alternative was death with the confiscation of property, or a fine of ten times the amount of the bribe, with accompanying atimia. Caillemer (*D. & S. Dict. Ant.*, s. v. *δεκασιμῶν γραφή*) accepts this conclusion, and accounts for the apparent divergency of the sources by the reasonable assumption that the orator in pleading dwelt upon the particular feature of the punishment which it suited his purpose to emphasize. On the laws quoted and the question of the penalties, cf. also Brewer "Die Unterscheidung der Klagen nach attischem Recht," etc. *W. St.* XXIII. pp. 63 ff.

<sup>1</sup>Lys. 29. 12.

<sup>2</sup>Isoc. 8. 50; the speaker is of course thinking primarily of the bribery of electors. I cannot agree with Baron (cf. *infra* p. 132. n. 2), who wishes to make this statement apply *only* to the bribery of juries.



are still pending.<sup>1</sup> These statements must have been substantially true, since they were made publicly and had to do with facts which would be within the knowledge of the citizens. The cases referred to by Aeschines, in particular, are introduced merely for illustration in the discussion of a point of law, and there is not the slightest ground for suspecting them of exaggeration. The conclusion follows inevitably that during the period covered by these cases bribery was widely prevalent.

Numerous attempts have been made to explain the precise methods employed in bribing juries. The lexicographers derived *δεκάζειν* from *δέκα* or *δέκας*, and believed that the word was used because the corrupt jurors were accustomed to assemble *κατὰ δέκα* to receive their bribes, or because the bribers corrupted the dicasts by tens.<sup>2</sup> According to a statement attributed to Eratosthenes in his treatise *On the Old Comedy*, a statue of Lycus in the form of a wolf stood near the courts at Athens, and at this statue corrupt jurors were wont to assemble in groups of ten; from this source arose the proverbial expression *Λύκου δέκας*.<sup>3</sup> On the basis of this, Schoemann argued the existence of associations of corrupt jurors, who were willing to sell their votes, and whose representatives, usually ten in number—one to represent each tribe, congregated near the courts to conduct negotiations and to receive the money for votes they were to deliver.<sup>4</sup> Hüllmann professed to find the existence of real "organisirte Bestechungsgesellschaften" similar to those which existed in Rome in late republican times, and tried to identify them unreservedly with the clubs mentioned by Thucydides.<sup>5</sup> These elaborate explanations, based upon the statements of the lexicographers, are not supported by contemporary evidence.<sup>6</sup>

<sup>1</sup>Aeschines 1. 86-87.

<sup>2</sup>Bekker *Anec. Gr.* 236. 6; *Schol.* to Aeschines 1. 87.

<sup>3</sup>Harp. s. v. *δεκάζων*.

<sup>4</sup>See M.S.L. p. 184.

<sup>5</sup>*Staatsrecht des Alterthums* pp. 144 ff.; *de Atheniensium συναμοσιαις ἐπὶ δέκας καὶ ἀρχαῖς*.

<sup>6</sup>As Büttner suggests (p. 77. n. 72) it is probable "dass die ganze Sache auf den etymologischen Erklärungen der Lexicographen beruht." *Δέκας*, originally referring to the "divisions of ten" which are met with in Greek religious, military, and civil institutions, had come by this time to signify any "division," whatever the number of persons of whom it was composed, like the Latin *decuria*. Thus *δεκάζειν*, like *decuriare*, originally meant to divide into groups of ten, then to organize into groups of any

It is highly improbable that the comic *Λύκου δέκας* originally implied the details with which later grammarians attempted to explain its resemblance to *δεκάζειν*. At an early period, *δεκάζειν* was established in the meaning "to bribe."<sup>1</sup> Lycus was the hero-patron of the jurors.<sup>2</sup> Some comic poet no doubt referred to the jurors as the "troop of Lycus," *Λύκου δέκας*, knowing that *δέκας* would suggest *δεκάζειν*, and that the sly allusion might be counted on to raise a laugh.<sup>3</sup>

Before Euclides, however, the bribery of juries could not have been a complicated task. The interested parties knew in what court and before just what dicasts their cases were to come. It merely remained to get into communication with the men who were open to bribes and to reach a satisfactory agreement. But under the new system there could have been but one way of bribing a jury. By wholesale subornation so many of the citizens might have been corrupted that on any jury which might be drawn the purchased votes would be sufficient to turn the scale at the balloting. This was the procedure followed in the only case of which the details are given, the unsuccessful attempt to save Ergocles from condemnation on a charge of embezzling the public funds.<sup>4</sup> In the speech of Lysias *Against Philocrates*, we are told that Philocrates and the other friends of Ergocles boasted openly of having bribed five hundred men from the Piraeus and sixteen hundred from the city, who were to report for jury duty on the day of the trial.<sup>5</sup> Twenty-one hundred corrupted dicasts, or over a third of the entire body of qualified jurors, if we put the total number at six thousand,<sup>6</sup> would constitute probably

size. It acquired political significance, and was used of organizing and winning over citizens for any project, later coming to be used particularly of winning over by bribery. The word is also explained as a causative from the stem ΔΕΚ (cf. Büttner *loc. cit.*). For a lengthy discussion of the etymological question and complete citations, cf. Albrecht *Ueber Aemtervertheilung in Athen* (Nordhausen: 1869) pp. 11 ff.

<sup>1</sup>Cf. *supra* p. 67.

<sup>2</sup>Aristoph. *Wasps* 389; cf. Lipsius *A. R. I.* p. 174.

<sup>3</sup>Cf. Lipsius *A. R. I.* p. 175. I can hardly believe that during the early period, when the personnel of each court was known in advance, the agents of corrupt dicasts would find it necessary to appear in the immediate vicinity of the courtrooms.

<sup>4</sup>Cf. *supra* p. 60. n. 1.

<sup>5</sup>Lys. 29. 12.

<sup>6</sup>Gilbert (*Cons. Ant.* p. 395) believes that at this time there can hardly have been 5,000 qualified dicasts in all. (For the earlier period, cf. *Wasps* 661 ff. with Starkie's note, and Gilbert *Cons. Ant.* p. 391. n. 4.)

half of the number which might reasonably be expected to appear on the day of the trial. Thus Ergocles could rely on the vote of nearly half of any jury that might be drawn, and probably counted on having enough friends and sympathizers in addition to the purchased votes to procure his acquittal.

While the figures given are probably exaggerated, the statement is exceedingly valuable, for it confirms our conclusions regarding the method which must have been employed to bribe juries at this time. The proceeding offers two difficulties: one, the apparent impossibility of corrupting the great number of dicasts necessary for success; two, the expense involved in such wholesale bribery.

As regards objections based on the former difficulty, in the first place we cannot believe that attempts to bribe juries would have continued through the fourth century with such frequency had they proved uniformly unsuccessful. Secondly, the actual work of bribery was accomplished by means of skilled agents, each of whom was responsible for the delivery of a certain number of votes.<sup>1</sup> In the third place, it must be remembered that by no means all of the qualified dicasts reported for duty every day. The corrupted jurors were sure to report as a part of their contract, and would constitute a greater percentage of those who reported on any particular day than of the total number of dicasts. In the fourth place, the men who habitually reported for jury duty, like the modern "professional juror," would be known and their votes sought; and it is not to be expected that men to whom the fee of three obols was of great importance represented the best and least corruptible element of the citizen body. Further, it must be kept in mind that the rules of order in the Athenian court afforded an interested juror many chances to serve his client. Before and during the trial he could talk to those near him and attempt to influence them.<sup>2</sup> While the speeches were being made, he could applaud his friends and their advocates, and could seriously discomfit their opponents by hissing and shout-

<sup>1</sup>Cf. *infra* pp. 75 ff.

<sup>2</sup>Under the later system, an attempt was made to prevent communication between the dicasts while they were assembling (*Ar. Cons. Ath.* col. 33. 20 ff.). The appeals of orators to those of the jurors who know facts to tell the men near them shows the extent to which they communicated during a trial.

ing at them.<sup>1</sup> A few lusty fellows in the pay of one or the other of the litigants could produce a considerable effect and materially influence the result. Finally, this difficulty is disposed of by the fact that in the ecclesia, the assembly of all enfranchised citizens, majorities were obtained by bribery.<sup>2</sup>

As regards the financial difficulty of corrupting a large number of jurors, although the expense was undoubtedly very considerable, there must have been many cases in which it was well worth trying. For example, to take the case which has just been cited, Ergocles was charged with having embezzled thirty talents of the public money,<sup>3</sup> and was said to have offered a bribe of three talents to the orators on condition that they refrain from prosecuting and so save him.<sup>4</sup> Had this sum been employed in purchasing the votes of jurors, it would have been sufficient for wholesale corruption.<sup>5</sup>

The offer of a bribe was by no means the only way of approaching dicasts, as there were many considerations of a personal or political nature upon which appeals might be based. At every period of the democracy, litigants and their friends seem to have canvassed the dicasts assiduously. Aristophanes draws a vivid picture of the fifth century juror besieged by throngs of suppliant litigants while on his way to the courtroom where he is to serve. "While I am crawling from bed they are watching for me at the railings of the court, fine six-foot fellows. And then, as soon as I come up he gives me his soft hand, which has filched from the public moneys, and with low bows and piteous wails they beg for

<sup>1</sup>Dem. 45. 6; Plato *Apol.* 17D, 20E, 30C; Isoc. 15. 20-22; cf. the very doubtful story (Photius *Bib.*, cod. 61; cf. 264) that Eubulus so influenced the jury which tried Aeschines that they refused to listen to Demosthenes.

<sup>2</sup>Cf. *infra* pp. 117-18.

<sup>3</sup>Lys. 29. 2.

<sup>4</sup>Cf. *supra* p. 60. n. 2.

<sup>5</sup>Had the three talents been employed in the purchase of corrupt jurors, the friends of Ergocles could have offered each of the twenty-one hundred dicasts who were said to have been corrupted fifty-one obols, or seventeen times the amount of the fee which each would receive from the state. This was no inconsiderable sum for men who lived on their fees as dicasts and ecclesiasts (See Croiset *Aristophanes and the Political Parties at Athens* p. 102). Or, with the same sum, he could have offered eighteen obols, or six times the amount of the jury fee, to every qualified dicast in Athens. Had he been willing to devote half of his ill-gotten wealth to the evasion of punishment, he could have offered every dicast in Athens ninety obols, or thirty times the amount of the fee.



mercy."<sup>1</sup> The satire is clearly directed at the constant canvassing of dicasts by litigants and their friends. An attempt to prejudice an entire jury in the court of the thesmothetes is described by Antiphon, in the speech *On the Choir Boy*,<sup>2</sup> in connection with the prosecutions, already mentioned, brought by the choregus against Philinus and three other defendants. As the plaintiff was proceeding by *eisangelia*, the cases were to come before the court of the thesmothetes.<sup>3</sup> The day before the first of them was set for trial, Philocrates, brother of the boy Diodotus who had died at the house of the choregus, appeared before this very court which was to try them and accused the choregus of being responsible for the lad's death. He had been persuaded to do this by Philinus and the other defendants, and his object was to prejudice the jurors against the choregus and to procure the acquittal on the morrow and succeeding days of the men who were being prosecuted.<sup>4</sup> It is not remarkable that other instances of attempts to influence juries by other means than bribery during the fifth century have not come down to us, since scarcely any records have been preserved from the hundreds of cases which were being tried every year.<sup>5</sup>

After the archonship of Euclides, as has been seen in the study of bribery, any attempt to approach the dicasts chosen for a particular case was a matter of great difficulty. Prejudicial reports might be circulated in the agora and throughout the city previous to the trial, and these would be a means of influencing the whole body of jurors.<sup>6</sup> But the real difficulty would be to contrive a practicable method of canvassing the particular men drawn on the jury. This could best be effected, it would seem, on the day of the trial and in the vicinity of the courtrooms. The consideration here may be limited to such attempts. Demosthenes twice describes efforts to influence jurors. In the commencement of the speech against Aeschines *On the False Embassy*,

<sup>1</sup>Aristoph. *Wasps* 552 ff.

<sup>2</sup>6. 21, 34 ff.

<sup>3</sup>6. 35; cf. M.S.L. p. 77; Caillemer, in D. & S. *Dict. Ant.* II. pp. 498 ff. (s. v. *eisangelie*).

<sup>4</sup>6. 21. For a more complete account of this case, cf. *supra* pp. 49 ff.; *infra* p. 105. n. 5.

<sup>5</sup>[Xen.] *Pol. Ath.* 3. 2.

<sup>6</sup>Cf. *supra* pp. 56 ff.

he asserts that the jurymen are well aware of the intrigue and canvassing which have taken place in connection with the trial, for they have seen what crowds of partisans beset them while they were being drawn for the court. He reminds them that the entreaties and canvassing of the faction which Aeschines has summoned to his support have for their object the unfair advantage of individuals, contrary to the intent of the laws.<sup>1</sup> A similar scene must have been enacted at the trial of Midias, if the case came to trial, for Demosthenes says: "The more of you Midias has annoyed with his canvassing—for I saw what he was doing just now before the courtrooms—so much the rather am I hopeful of securing justice."<sup>2</sup> And Aeschines, in the speech *Against Ctesiphon*, gives us to understand that the supporters of Demosthenes were present in force on the occasion of the trial, and canvassed possible members of the jury in the agora before the opening of court.<sup>3</sup> Richardson believes, and not without cause, that this is a hint at clubs which were supporting Demosthenes in the trial.<sup>4</sup>

In important cases, efforts to influence public sentiment and even personal canvassing no doubt began long before the trial. Then, when the day of the hearing arrived, the supporters of the respective litigants would become "lobbyists," and would assemble

<sup>1</sup>19. 1.

<sup>2</sup>21. 4. (The words *πρὸ τῶν δικαστηρίων* are variously taken of time or place; it is quite immaterial which is meant, as the one implies the other.) The canvassing of the jurors before the opening of the trial of Aeschines must have taken place substantially as described, for the facts would be apparent to the members of the jury, and Demosthenes would not dare to misrepresent. But the passage in the speech *Against Midias* offers a difficulty, depending upon the question of whether or not the trial took place and whether the speech was actually delivered (cf. *supra* p. 58. n. 6). The difficulty is not a serious one. If the speech was delivered, the statement must, like the preceding one, be taken as a substantially true account of what actually took place while the jurors were assembling and being drawn. If the case did not come to trial, as is probable, and the speech was not delivered, the passage shows even more conclusively that the practice of besieging and canvassing the jurymen was very common indeed, and was resorted to in practically every important case; for otherwise it would not have become a *topos* in the preparation of a legal argument. As Midias could not have personally interviewed more than a few of the jurors in the short time at his disposal, we must believe that he was assisted by a number of friends, for the most part members of the clubs which were helping him in the trial (cf. *supra* p. 23. n. 2).

<sup>3</sup>3. 1.

<sup>4</sup>*Aeschines against Ctesiphon* note *ad loc.*; cf. *infra* p. 88. n. 5.

at the entrance to the courts to besiege with argument and entreaty the jurors who reported for duty.<sup>1</sup> It is extremely probable also that by presenting themselves for service not a few were able to get on the jury and still further to serve the cause of their friend or associate.

It is very probable that the club of Midias<sup>2</sup> was concerned in the canvassing described by Demosthenes, for it manifestly would be impossible for him to have reached any appreciable percentage of the jurors without the aid of his associates. And in the canvassing of the jury in *Aeschines vs. Ctesiphon* we have probably another instance of club activity. There is no direct statement that clubs or cliques were concerned in the cases of bribery which have been studied. But it is unthinkable that those of the clubs which were very active in litigation would have neglected so important and effective a means of winning over jurors, especially at a time when bribery was of frequent occurrence.<sup>3</sup> Not only could associates be of service in conducting the actual negotiations, but their contributions of money could be used.

Again, the bribery of any considerable number of dicasts could not have been accomplished by individuals unassisted. It would obviously be impracticable for the litigant to interview all of the jurors personally; agents would be required on both sides. The intending briber would endeavor to secure as his go-betweens men who knew what jurors could be safely approached and how the negotiations should be conducted. On the other hand, purchasable jurors would also stand in need of an agent. Were

<sup>1</sup>The terminology of these passages is interesting. The friends of the parties, summoned to their support, are *παράκλητοι*. They are said *ἐνοχλείν* and *παραγγέλλειν* the dicasts, and the proceeding is referred to as *σπουδή* and *παραγγελία*. This language suggests elections and assemblies, and indicates that the canvassing of a jury was very similar to the canvassing of ecclesiasts or electors, which is to be expected in view of the fact that the dicasts were also the ecclesiasts and electors. The resemblance would appear especially in important cases where the jury was large and in trials of political importance (cf. *infra* pp. 98 ff).

<sup>2</sup>Cf. *supra* p. 23. n. 2.

<sup>3</sup>It is interesting that the same law forbids the organization of clubs for the overthrow of the democracy and the bribery of a jury (cf. *supra* p. 67. n. 6). The *a priori* probability of the clubs having made use of bribery to influence juries is noted by Vischer (p. 172), and led Hüllmann to identify them unreservedly with the "Bestechungsgesellschaften" of the scholiasts (cf. *supra* p. 69. n. 5).

there, then, men who could deliver "blocks" of votes, in certain courts under the old system, from all the dicasts under the new, and who represented their associates in these corrupt transactions?

Isocrates describes such a man.<sup>1</sup> He is Xenotimus, "the man who corrupts the laws, who bribes the courts, and who outrages the authorities." He is spoken of, not as the man who bribed a jury on some particular occasion, or even on several occasions, but as "the man who bribes juries,"<sup>2</sup> that is to say, who makes a practice of it. Aeschines speaks of prosecutions against men who are charged with undertaking to bribe the ecclesia and the courts, "just as Nicostratus does even now."<sup>3</sup> Nicostratus is evidently, like Xenotimus, a skillful pettifogger, who makes a specialty of bribing dicasts and ecclesiasts, and whose practices are so notorious that his name can be used as an illustration, to characterize the class of men to which he belongs, with the certainty that the average Athenian citizen will at once recognize the type. These cases show the existence in both the fifth and the fourth centuries of a class of men whom we may describe as "professional bribers." They were undoubtedly in touch with many corrupt jurors, and could each deliver a considerable "block" of votes to the man who was willing to pay their price. They were in a position to represent both the purchasable dicasts and the intending purchasers, and to fill both of the needs which have been mentioned. Through their agency any citizen who wished to bribe a jury could reach men who would be willing to accept his money and render a corrupt decision.<sup>4</sup>

There must have been a definite understanding between such men as Xenotimus and Nicostratus and their assistants, although it is possible that there was no formal organization. These groups would of course not limit their activities to bribery, and are

<sup>1</sup>Isoc. 18. 11.

<sup>2</sup>Loc. cit.: μετὰ Ξενοτίμου τοῦ τοῦ νόμους διαφθείροντος καὶ τὰ δικαστήρια δεκάζοντος.

<sup>3</sup>Aeschines 1. 86: ὥσπερ καὶ νυνὶ Νικόστρατος.

<sup>4</sup>The statement of Aeschines (1. 86 ff.) suggests that the prosecutions for bribery to which he alludes were directed against those men who acted as the agents for litigants and actually did the bribing. Probably, as is often the case in modern times, it was difficult to connect the "man higher up" with the crime, and prosecutions were confined to indictments of notorious offenders like Xenotimus and Nicostratus.



probably to be classed with the organizations of sycophants, such as that of Mnesicles and Meneceles,<sup>1</sup> which operated in the courts for profit.

## EVIDENCE

Friends and associates of a litigant frequently assisted him by appearing as witnesses in his behalf, both in hearings before arbitrators and before the jury-courts. This was a service which they were commonly expected to perform when occasion arose.<sup>2</sup>

In many cases they were able to fulfill this obligation by testifying merely to facts which had come within their knowledge. Their evidence was particularly valuable, for close friends and comrades who were intimately acquainted with the litigant's affairs and who had clear and definite knowledge of the facts in the case made good witnesses. One of the first moves in a lawsuit would be to secure the testimony of such men.

It is equally true, however, that in many instances they did not content themselves with testifying to the facts, and frequently resorted to falsehood. The pages of the orators are filled with charges of perjury.<sup>3</sup> While many of these are without doubt allegations pure and simple and cannot be taken at their face value, it is a well established fact that at Athens perjury was of frequent occurrence.<sup>4</sup> So seriously was it felt to impair the administration of justice that it was the subject of stringent legislation, and offenders were visited with severe punishment.<sup>5</sup> Prosecutions were encouraged by making the penalty incurred

<sup>1</sup>Cf. *infra* p. 95. n. 3.

<sup>2</sup>[Lys.] 8. 18; Dem. 54. 35; cf. [Isoc.] 1. 23.

<sup>3</sup>E. g. Dem. 54. *passim*; 21. 139; 37. 48; 39. 18; 30. 3; [34. 19]; [44. 3]; 33. 37]; [48. 44]; Lys. 29. 7; [20. 18]; Isoc. 18. 51 ff.; Isaeus 5. 8-9; etc.

<sup>4</sup>Cf. Bonner p. 88; Leisi collects and carefully considers the evidence in his chapter "Die Unehrlichkeit des Atheners" (pp. 114 ff.), and concludes that perjury was of common occurrence: "müssen wir doch zugeben das im attischen Gerichtswesen eine starke Korruption herrschte." While there are few accounts of false depositions before arbitrators, we must believe that this was even more common than perjury in open court, in proportion as it was easier and less dangerous (cf. [Dem.] 34. 19: πρὸς δὲ τῷ διατητῇ ἀκινδύνως καὶ ἀναισχύντως μαρτυροῦσιν ὅ τι ἂν βούλωνται. See Bonner pp. 90-91).

<sup>5</sup>Cf. Bonner pp. 88-93; Leisi pp. 120-39; Télyfy 1102-06; Rentzsch *De dikē ψευδομαρτυρίων in iure Attico* (Leipzig: 1901).

by the prosecutor in case of failure very light,<sup>1</sup> and three convictions resulted in loss of civic rights.<sup>2</sup>

The introduction of perjured testimony in litigation was a weapon exceedingly convenient for the clubs, and many cases of their activity in the courts are of this kind. Demosthenes speaks of the club relation as one of the three causes which lead men to perjure themselves. "I am sure you will all agree," he tells a jury, "that men who give false testimony are induced by one of three motives; either by a bribe to relieve their poverty, or by friendship (*ἑταιρία*), or by enmity to the adverse party."<sup>3</sup> Few Athenians were either *ἄφιλοι* or *ἀνέταιροι*, and much of the perjury which took place at Athens must have had this cause.<sup>4</sup>

The most important case of perjured testimony introduced by associates to assist a comrade is found in *Ariston vs. Conon*. The defendant had no difficulty in getting the members of his club to testify falsely in his behalf. In the proceedings before the arbitrator, he tendered a deposition signed by a number of the members of his drinking club, the content of which was shown to be false by the testimony of disinterested parties.<sup>5</sup> The plaintiff dwells at length upon the character of the defendant's witnesses. They are members of his drinking club and have been associated with him in many outrages similar to the one for which he is now being prosecuted. They are men of dissolute character, with no regard for the gods or for the sacredness of an oath, and it is entirely natural that they should be willing to bear false witness in his behalf, especially since it involves nothing more serious than subscribing to a trifling deposition. "These," says Ariston to the court, "are their fine and spirited sayings—'Shan't we bear witness for one another? Doesn't it become friends and comrades? (*ἑταῖροι*) What will he bring against you that you're afraid of? Some men say they saw him beaten? We'll

<sup>1</sup>[Dem.] 47. 2.

<sup>2</sup>And. 1. 74.

<sup>3</sup>Dem. 29. 22-23 (Kennedy); *ἑταιρία* here cannot be translated by any one English word; it is used in the technical sense of the club relation, but evidently without excluding any friendly relationship which would be a motive for perjury.

<sup>4</sup>Leisi pp. 118-19; Vischer p. 172.

<sup>5</sup>Dem. 54. 30 ff., esp. 33: *συμπόται δ' ὄντες τούτου καὶ πολλῶν τοιούτων ἔργων κοινωνοί, εἰκότως τὰ ψευδῆ μεμαρτυρήκασιν.*

say you never touched him. Stripped of his coat? We'll say they began. His lip was sewed up? We'll say your head or something else was broken.'"<sup>1</sup>

In the same way, the associates of Midias were accustomed to assist him, whenever he became involved in litigation, by testifying in his behalf. Not only did he possess paid retainers who protected him in lawsuits for hire, but he was surrounded by a number of men who were always willing to perjure themselves for his benefit by attesting false depositions.<sup>2</sup> Demosthenes speaks of them as constituting "an organized club of witnesses" (*μαρτύρων συνεστῶσ' ἑταιρεία*), but they are sharply contrasted with the hireling retainers, and are expressly said not to have been bribed to testify. They are undoubtedly the *ἑταῖροι* mentioned elsewhere in the speech, and not a "guild" of professional perjurers.<sup>3</sup>

In *Nicobulus vs. Pantaenetus*, a similar situation appears. Pantaenetus, who is the plaintiff in the original action,<sup>4</sup> is a member of a club, characterized as his "hive of confederates" (*τὸ ἐργαστήριον τῶν συνεστῶτων*), which has been aiding him in the course of the litigation.<sup>5</sup> Nicobulus alleges that he has no case in fact, but that he comes into court relying upon the false testimony which his comrades who are in league with him are ready to give.<sup>6</sup>

The defendant in *Mantitheus vs. Boeotus* belonged to a club of litigious men, headed by Mnesicles and Meneceles, who assisted one another in the courts by means of perjured testimony.<sup>7</sup> This case is of particular value, for the language employed shows clearly the system of mutual support which prevailed among associates. Boeotus is said to perjure himself for his comrades, contributing (*ἐραυίξει*) his services as a witness just as the member of an *eranos* contributes a sum of money.<sup>8</sup> This indi-

<sup>1</sup>*Ib.* 33-39 (Kennedy). For these clubs, cf. *supra* p. 25. n. 1.

<sup>2</sup>Dem. 21. 139.

<sup>3</sup>Cf. *supra* p. 23. n. 2.

<sup>4</sup>Pantaenetus has brought suit against Nicobulus regarding a mine; Nicobulus has filed a special plea, in the hearing of which the present speech is delivered.

<sup>5</sup>37. 39; cf. *infra* p. 94; Leisi p. 119.

<sup>6</sup>*Ib.* 48.

<sup>7</sup>Dem. 39. 2, 13, 18; [40. 9]; cf. *infra* p. 95. n. 3.

<sup>8</sup>*Ib.* 39. 18; cf. Harp. s. v. *ἐραυίζοντες*.

icates the existence of a distinct understanding and a well defined system of mutual support among members of certain classes of clubs. The man who perjured himself to help an associate out of a legal difficulty did so either in the firm assurance that he himself would in turn receive similar assistance whenever necessity arose, or by way of requiting services which his comrades had previously rendered.<sup>1</sup>

While this club of Meneceles and Mnesicles employed the same means as did other clubs in supporting its members, in one respect it exhibits a totally different character. It was one of the clubs which existed at Athens primarily for the purpose of engaging in lawsuits from which money might be gained, and was in reality an organization for profit, whose members made a business of litigation. It is spoken of as a club of sycophants, or professional pettifoggers,<sup>2</sup> which made a practice of bringing suits of every kind against men from whom something might be gained, and which seems to have been notorious.<sup>3</sup> When Boeotus became affiliated with it and secured the aid of its members in his suit against Mantias, his father, there was no doubt an understanding that the members were to have a share in any profits which might accrue, and it seems fairly certain that the suit was suggested to him by his comrades.<sup>4</sup>

The similar club of sycophants headed by Melas the Egyptian supported Dicaeogenes with perjured testimony in his suit for the estate of his adopted father, and by this means enabled him to secure a judgment.<sup>5</sup> As in the case of the club of Meneceles and Mnesicles, the members of Melas' club were accustomed to commit perjury for one another.<sup>6</sup>

Here then we have clubs composed of professional sycophants, men who gained a living by means of prosecutions. The members were versed in the tricks of the courts, were willing to commit perjury if necessary, and were formidable by reason of their close organization and system of mutual support. Men who

<sup>1</sup>Crito and Timocrates, who testified for Boeotus (40. 58 ff.), must have been members of the club.

<sup>2</sup>Dem. 39. 2; [40. 9]: ἐργαστήριον συκοφαντῶν.

<sup>3</sup>Dem. 39. 13-14, 2.

<sup>4</sup>[Dem.] 40. 32. For an agreement of this kind, cf. *supra* p. 45.

<sup>5</sup>Isaeus 5. 7-9.

<sup>6</sup>*Loc. cit.*: τὰ ψευδῆ ἀλλήλοις μαρτυρεῖν.



would give their testimony as a speculation in which the profit was contingent on success assuredly would not hesitate to testify falsely if a sufficient cash consideration were offered. In these clubs we have bands of men who would become, when occasion arose, professional perjurers. Meneceles, Mnesicles, and the leaders of other similar clubs could undoubtedly furnish witnesses to anyone who was willing to pay for the service.

That much of the false testimony which was introduced in the Athenian courts was purchased is attested not only by numerous passages in the orators which charge the subornation of perjury,<sup>1</sup> but also by the fact that speakers felt obliged to establish in advance the disinterestedness of their own witnesses, by showing that they could not have been bribed.<sup>2</sup> In a state where litigation was constantly in progress and where there was a large class of sycophants, it would be remarkable if bribery of witnesses were not of common occurrence. And we are not surprised to learn from Demosthenes that the rich are at no loss for witnesses.<sup>3</sup> It has been noted that the funds given to Aeschines by Philip and to Aphobus by Onetor and Timocrates were used in part to suborn witnesses.<sup>4</sup> Thus the usefulness of associates and friends was not limited to the cases in which they actually appeared on the witness stand, but their support might take the form of a cash contribution to be used in hiring witnesses. They could also render assistance in the actual work of procuring witnesses by putting the litigant into communication with men like Melas, Meneceles, and Mnesicles.

Men were also induced to commit perjury in the hope of injuring some personal or political enemy,<sup>5</sup> and one of the first moves of a litigant and his friends was to seek out the enemies of the opponent and enlist their support.<sup>6</sup> Here also associates could be of service.

Witnesses who could not be induced to testify falsely by any

<sup>1</sup>E. g. [Dem.] 44. 3; 34. 18; Dem. 19. 216; 29. 28; Aeschines 2. 154-55; Lys. 29. 7; etc.

<sup>2</sup>Dem. 29. 24; 57. 24, 52.

<sup>3</sup>Dem. 21. 112. On bribery as a frequent cause of perjury, cf. Leis p. 116.

<sup>4</sup>Dem. 19. 216; 29. 28; cf. *supra* p. 45.

<sup>5</sup>Dem. 29. 22-23; cf. 39. 3.

<sup>6</sup>Xen. *Mem.* 2. 9. 5 ff.

of the three considerations mentioned by Demosthenes might still yield to intimidation and perjure themselves through fear.<sup>1</sup> As has been seen, the clubs were most effective agents in coercion.<sup>2</sup>

#### THE SUPPRESSION OF EVIDENCE

In many respects, perjury and the suppression of evidence were closely akin; under certain circumstances, as for example where an oath of disclaimer was taken, the one might involve the other; the motives which prompted and the results attained were similar if not identical in either case. Consequently, where perjury and the manufacturing of evidence were commonly resorted to, it was inevitable that there should have been much suppression of evidence. In cases where the introduction of false testimony was not necessary and the desired ends could be obtained by merely suppressing the facts, the latter proceeding was more convenient and attended with less danger.

That the suppression of evidence, if extensively practiced, seriously impaired the efficiency of the courts, was of course recognized, and the laws concerning witnesses contained provisions for compelling them to testify.<sup>3</sup> Nevertheless, there were ways to avoid testifying.<sup>4</sup> Measures to compel witnesses did not originate with the court; the formal summons could not be used against witnesses who refused to appear before an arbitrator; there were exceptions to the compellability of witnesses; and there were schemes by which the law might be evaded, as for example in *Lycurgus vs. Leocrates*, where witnesses professed forgetfulness of the facts, or were able to find other excuses for not testifying.<sup>5</sup> Finally, if the witness was willing to take the solemn oath of disclaimer, he might avoid testifying, for no punishment seems to have been provided for taking this oath falsely.<sup>6</sup>

The existence among club members of a distinct and definite obligation to testify in one another's behalf has been shown.<sup>7</sup>

<sup>1</sup>[Lys.] 20. 18.

<sup>2</sup>Cf. *supra* p. 61.

<sup>3</sup>Bonner pp. 41 ff.; Leisi pp. 49 ff.

<sup>4</sup>Bonner pp. 43 ff.

<sup>5</sup>*Lyc. in Leocr.* 20; cf. [Dem.] 49. 19.

<sup>6</sup>Bonner p. 91; Leisi p. 69.

<sup>7</sup>Cf. *supra* pp. 77 ff.

That the relation of *ἐταιρεία*, which frequently led a comrade to perjure himself in shielding another, at the same time permitted him to testify against a fellow-member is inconceivable. Therefore it must be believed that an equally definite obligation forbade an associate to testify against his fellows. This prohibition would be particularly felt in regard to matters which concerned the hetaery as a whole and acts performed for it. A number of instances attest the unwillingness of club members to testify against one another.

Andocides, who informed against his associates in regard to the mutilation of the Hermae, was the object of severe disapproval even on the part of the average democratic citizen for having violated his obligation of *ἐταιρεία*.<sup>1</sup> This is amply established by the elaborate defense that he feels obliged to make on this point before democratic audiences.<sup>2</sup> In emphatic terms he calls attention to the fact that the betrayal of his associates was the only possible means of safety for his father and many near relatives and friends who were about to be put to death for a crime of which they were innocent.<sup>3</sup>

The associates absolutely refused to testify against Eratosthenes when he was accused by Lysias. Lysias tells the court that he will introduce as witnesses, to prove that Eratosthenes was one of the "ephors" appointed by the associates, men who have heard the facts from Eratosthenes himself. Those who were associated with Eratosthenes at the time he cannot produce as witnesses, for they refuse to testify in violation of their oaths.<sup>4</sup>

This extreme aversion to testifying against an associate is further illustrated by an incident which Lysias narrates. Shortly before the meeting of the assembly which was to ratify the proposals of peace brought from Lacedaemon by Theramenes in 404, the oligarchs contrived a plot to get out of the way certain democrats who were preparing to oppose the adoption of the terms. They secured the services of two informers, Theocritus and Agoratus, and introduced the former before the senate in secret session, to give information of an alleged conspiracy. In

<sup>1</sup>And. 1. 54; [Lys.] 6. 23; cf. *supra* p. 39.

<sup>2</sup>1. 54-69; 2. 7-10.

<sup>3</sup>1. 68.

<sup>4</sup>Lys. 12. 43-47.

order to give his conduct the appearance of unwillingness and constraint, he refused to give the names of those in the plot, on the ground that he and they had sworn the same oaths.<sup>1</sup> While this was, as Lysias says, but a pretense on his part, it was a pretense which would have been quite unavailing had not the bond of comradeship been regarded as extremely solemn and sacred, even in a temporary union.

Not only did associates shield their comrades by themselves refusing to testify against them, but they also kept other witnesses from testifying, by intimidation or other means. The most important case is found in *Euxitheus vs. Eubulides*. Euxitheus, a poor citizen, had testified against Eubulides in a lawsuit some time previously, with the result that Eubulides failed to receive a fifth part of the votes. The offense was not forgotten, and Eubulides, aided by the members of his club and others, so manipulated a deme meeting that he succeeded in getting the name of Euxitheus struck from the rolls, on the ground that he was not entitled to citizenship.<sup>2</sup> The latter appealed the case and appeared before a jury-court to establish his citizenship. Eubulides and his "gang" of supporters are fighting the case with the utmost vigor;<sup>3</sup> the burden of proof is upon Euxitheus,<sup>4</sup> and failure to support his claim will result in his being sold into slavery.<sup>5</sup> With such examples as this before their eyes, it is not remarkable that witnesses were reluctant to testify against the wealthy and influential and were often coerced into silence.

There are many cases which show the difficulty of securing witnesses against men of wealth and personal influence,<sup>6</sup> notably the experience of Demosthenes in his prosecution of Midias. Those who had suffered wrong at the hands of Midias were unwilling to testify regarding his conduct, since his violent and

<sup>1</sup>*Ib.* 13. 18-22; cf. *supra* pp. 34-35 on the oaths mentioned in this and the preceding case.

<sup>2</sup>Dem. 57. 8 ff.; cf. also *infra* pp. 113, 116, 121, 124; Kennedy IV. pp. 308-09, and for the club of Eubulides *supra* p. 23. n. 3. A similar plot is alleged by the speaker in Isaeus 12. 12.

<sup>3</sup>Cf. *supra* pp. 57-58; *infra* pp. 116, 124.

<sup>4</sup>Dem. 57. 17.

<sup>5</sup>Hypotheses to Dem. 57 and Isaeus 12; cf. Lipsius *A. R.* p. 415.

<sup>6</sup>[Lys.] 20. 18; Lys. 7. 21; Dem. 19. 80-81; Isaeus 8. 42.



litigious nature and his great resources, his wealth, and his associates caused him to be generally feared.<sup>1</sup>

Litigants did not rely solely upon this reluctance to antagonize men of wealth and power, but approached possible witnesses, either in person or through the agency of associates and friends, with definite threats. Thus Theocritus and his comrades are said to have visited the witnesses of his opponent, Epichares, and prevailed upon them by threats and persuasion not to testify.<sup>2</sup>

Just as men could be induced to perjure themselves by the offer of bribes, so witnesses could be bought off and induced to refrain from testifying.<sup>3</sup> Club members could render valuable assistance, either by approaching prospective witnesses, or by contributing money.<sup>4</sup>

The clubs then were responsible not only for much of the perjury which took place at Athens, but also for the suppression of much evidence. In many of the cases in which testimony was withheld, the clubs were responsible, either directly by reason of the refusal of the members to testify, or indirectly by inducing others to refuse.

#### THE PLEADING OF ADVOCATES<sup>5</sup>

An excellent opportunity for the intervention of friends, associates, or political adherents, was offered by the law which permitted the introduction of advocates (*συνήγοροι*). The original intent of this law appears from a number of passages.<sup>6</sup> It was to enable the citizen who was at a disadvantage in handling his case, either from inexperience in legal matters or from inability to speak, to avail himself of the services of friends and thus to have a fair chance before the courts. Friendship<sup>7</sup> or relationship<sup>8</sup>

<sup>1</sup>Dem. 21. 137, 20; cf. *supra* p. 40.

<sup>2</sup>[Dem.] 58. 7; for the club of Theocritus, cf. *infra* p. 90. n. 1.

<sup>3</sup>Lyc. in *Leocr.* 20.

<sup>4</sup>Cf. *supra* pp. 43 ff. .

<sup>5</sup>As Professor Bonner has discussed advocacy (pp. 11-12, 82 ff.), it will be sufficient here to emphasize those points which are important to our investigation, and to illustrate the ways in which advocacy was made use of by the clubs.

<sup>6</sup>E. g. Hyp. 3. 11 ff.; 2. 10-11.

<sup>7</sup>Isoc. 21. 1; Isaeus 4. 1; 6. 1-2; Aeschines 2. 184; [Lys.] 5. 1.

<sup>8</sup>Dem. 32. 31-2; Hyp. 2. 19-20.

to the litigant, or even hostility toward his opponent,<sup>1</sup> were apparently valid reasons for appearing as an advocate. From the large number of examples that might be cited, two cases, widely separated in point of time, will suffice to show the extent to which Athenians availed themselves of this privilege. Andocides, when prosecuted by Cephisius, was aided by a number of advocates in addition to those who had been chosen by his tribe to appear for him.<sup>2</sup> Probably more than half a century later, Polyuctus demanded ten advocates from his tribe and a number of others besides, to assist him in his defense against Alexander of the deme Oeum.<sup>3</sup>

When the practice of introducing advocates had assumed such proportions as this, it is apparent that the Athenian who was engaged in a lawsuit of any importance would lose no time in providing himself with men to plead in his behalf. These he could generally find among his own friends, associates, or relatives, or among the personal and political enemies of his opponent. It was of course of the utmost importance that the advocates should be men who would really bring strength to the cause which they supported, and to this end an especial effort was made to secure eloquent and convincing speakers, or men of great political influence and prestige. The latter qualification was especially desirable, and there are a number of cases in which litigants succeeded in obtaining the services of prominent and influential politicians. The speakers who appeared for Eratosthenes, when he was accused by Lysias, appear to have been men of this description.<sup>4</sup> Andocides was successful in securing political leaders of prominence to appear in his behalf, as is attested by the names of Anytus, Thrasyllus, and Cephalus.<sup>5</sup> Among the advocates who assisted Aeschines in the case of the embassy were Eubulus, the leader of his party,<sup>6</sup> and the general Phocion.<sup>6</sup> Demosthenes often appeared in the capacity of advocate, notably in *Aeschines vs. Ctesiphon*, in which he delivered his greatest speech.<sup>7</sup>

<sup>1</sup>[Dem.] 58. 4; Lys. 14. 2-3.

<sup>2</sup>And. 1. 150.

<sup>3</sup>Hyp. 3. 12.

<sup>4</sup>Lys. 12. 86.

<sup>5</sup>And. 1. 150.

<sup>6</sup>Aeschines 2. 184.

<sup>7</sup>Demosthenes, although his appearance in the case was formally that of advocate, was virtually the defendant; cf. *infra* p. 104.

As political influence often resulted from oratorical ability, in many if not the majority of cases both essential qualifications of an advocate were to be found in one and the same man. The number of such men was limited and their services in demand. Consequently advocacy tended to become a profession, whose members exacted a fee for pleading.<sup>1</sup> This was repugnant to the fundamental theory of the Athenian democracy, and the acceptance of remuneration for the performance of an advocate's duty, in either public or private cases, was expressly forbidden by law.<sup>2</sup> While this enactment may have checked the development of professional advocacy, apparently it could not do away with it. A number of passages in the orators suggest that an opponent's advocates have been suborned,<sup>3</sup> and the statement of Demosthenes that the rich have advocates always ready to plead in their behalf,<sup>4</sup> indicates that it was common for advocates secretly to receive fees for their services.

By virtue of the rules governing the speeches of advocates, the *συνήγορος* was peculiarly qualified to help the cause of the litigant. Apparently he was not liable, as was a witness, for any false statements he might make, and he could advance with impunity whatever he thought would strengthen the cause of his friend or client and damage that of the opponent.<sup>5</sup> He was not required to offer proof of his statements, and was allowed great latitude in subject matter.<sup>6</sup> Thus he could make false and slanderous assertions, which, even though unsupported by proof, could not fail to have an effect upon many of the jurors, especially if the speaker was a prominent man. Not infrequently, when a man of influence was pleading, he would urge his own worth and achievements, and ask a favorable verdict in recognition of his own services to the state.<sup>7</sup> The rules of procedure followed in certain kinds of suits occasionally made possible

<sup>1</sup>Cf. Bonner pp. 11-12.

<sup>2</sup>[Dem.] 46. 26; cf. *supra* p. 67, n. 6.

<sup>3</sup>[Dem.] 44. 3; 48. 36; *παρεσκεύασται* suggests that the advocates were secured by improper means.

<sup>4</sup>Dem. 21. 112.

<sup>5</sup>Aeschines 2. 170.

<sup>6</sup>Cf. Bonner pp. 83-84.

<sup>7</sup>Lys. 12. 86; Dem. 22. 40.

effective departures from the regular manner of introducing advocates.<sup>1</sup>

Even were there no actual cases in which associates appeared as advocates, it might be regarded as certain on a *priori* grounds that the assistance which they were mutually bound to render often took this form. There are, however, a number of instances where clubs were concerned. The members of the clubs of wealthy men which assisted Midias are said to have appeared in court with the intention of pleading in his behalf.<sup>2</sup> They had once before performed this service for him when the probole took place in the same trial.<sup>3</sup>

It cannot be doubted that among the advocates who appeared in behalf of Eratosthenes when he was accused by Lysias were members of the oligarchic clubs which were aiding him in his defense and through whose agency it was made difficult for Lysias to secure evidence against him.<sup>4</sup> The majority of his associates, however, could not have been popular with the democrats on account of their own part in the oligarchic regime, and could have rendered him more effective service by quietly aiding him to secure other and more acceptable advocates.

Aeschines, in warning the jury against being persuaded by Demosthenes to acquit Timarchus, says: "And shall Demosthenes beg off his associates?" (*ἔραϊποι*)<sup>5</sup>

[Demosthenes] describes an interesting variation from the regular introduction of advocates which Theopompus and three men who were in league with him successfully employed in an inheritance case. Theopompus was disputing with a woman, Phylomache, the possession of an estate. He associated with himself three of his close friends, but, instead of introducing them as advocates, got each of them to put in a separate claim for the estate. By this device they had each an allowance of time equal to that of Sositheus, who was conducting the case for Phylomache, and a separate ballot-box was placed for each claimant. The confederates of Theopompus, instead of speaking in support of their own false claims, spent all of their time in attacking the case of Phylomache, and Sositheus was unable to meet all of their allegations in the limited time allowed him. In addition, the jurors were so confused by the numerous ballot-boxes that they voted at random, and Theopompus received four or five more votes than the woman. ([Dem.] 43. 7-10, 30).

<sup>2</sup>Dem. 21. 213 ff.; cf. *supra* p. 23. n. 2.

<sup>3</sup>Cf. *supra* p. 64.

<sup>4</sup>Lys. 12. 86; cf. 43, 47, 85, and *supra* p. 83.

<sup>5</sup>Aeschines 1. 170 ff., esp. 173. This supports Richardson's suggestion that clubs aided Demosthenes at the time of the trial against Ctesiphon (cf. *supra* p. 74).



In a number of other cases, the phraseology employed suggests that the advocates were associates of the men in whose behalf they appeared. Pantaenetus is said to rely upon τοῖς λόγοις καὶ τοῖς συνεστῶσι μεθ' αὐτοῦ μάρτυσι.<sup>1</sup> Hagnotheus is said to have brought suit for the property of Calydon trusting to succeed by means of his ἐταιρείαις καὶ λόγων παρασκευαῖς.<sup>2</sup> In both these passages, apparently, the allusion is to speakers who are actually associates of the litigants or who have been secured with the aid of associates. The language in which Aeschines introduces some of his advocates at the conclusion of the speech *On the Embassy* suggests strongly that they were club comrades, for he speaks of them as "my friends and age-fellows (φίλοι καὶ ἡλικιώται) \* \* \* with whom I am intimate and whose manner of life I share."<sup>3</sup>

The custom of introducing advocates afforded opportunities for associates to assist also in other ways than by appearing in person. Undoubtedly in many cases they could render far more effective assistance by persuading some prominent man to plead, or by contributing means to secure the services of a skillful professional advocate. The man who had a strong following of associates would stand a far better chance of getting prominent and capable advocates than the one who was less influential. And so the litigant who belonged to a club or clubs had a great advantage, whether his comrades appeared for him in person or aided him with their influence or wealth to secure advocates.

#### THE DISSUASION OF ADVOCATES

Just as witnesses might be induced to refrain from testifying, so influence might be brought to bear on advocates to prevent them from appearing. The services of associates would be valuable, whether they used their wealth and influence to persuade an advocate, or merely acted as agents in the negotiation.

An instance is found in *Epichares vs. Theocrines*. The plaintiff charges that his advocates have been induced to abandon him

<sup>1</sup>Dem. 37. 48; cf. *supra* p. 79.

<sup>2</sup>Isaeus *fr.* 22 (ed. Scheibe).

<sup>3</sup>Aeschines 2. 184; cf. *supra* pp. 27 ff.

by means of the clubs (*ἐταιρείαι*) of the defendant and his friends.<sup>1</sup> Demosthenes and others who were hostile to Theocrines, and who had on that account engaged to appear as advocates for the prosecution, have availed themselves of the opportunity to reach agreements with the defendant on their own account. In the case of Demosthenes, the consideration was that Theocrines drop the proceedings for proposing illegal measures which had been instituted against him.<sup>2</sup>

While prominent politicians might be dissuaded from appearing as advocates by the settlement of some difficulty or by some concession in political matters, as in this case, paid advocates would probably be approached with the offer of a larger fee. In this event the money contributions made by associates would be useful.

#### INTEREST WITH OFFICIALS

There is reason to believe that litigants and their supporters not infrequently found opportunities of approaching the officials who were charged with the administration of the legal machinery and enlisting their aid. The evidence is by no means plentiful and is for the most part too general in its nature to afford a clear insight into the methods which proved successful, but there are instances where bribery or persuasion was employed to procure the connivance of magistrates in improper practices. There were many ways in which such interest with officials might prove advantageous.

Magistrates might be induced to favor a litigant in appointing the time of trials. During the fifth century, according to the Pseudo-Xenophon, the man who had business before the senate or the ecclesia, or a case before one of the courts, and who was willing to employ cash as a means of persuasion, could have his case attended to promptly, notwithstanding the great press of legislative and judicial business.<sup>3</sup> This can only refer to bribery of the higher magistrates who introduced the cases in their respective courts.<sup>4</sup> Officials of all degrees of importance, however,

<sup>1</sup>[Dem.] 58. 4, 42: *προδεδόμαι διὰ τὰς τούτων ἐταιρείας*. On these clubs, cf. Leisi p. 119.

<sup>2</sup>[Dem.] 58. 42 ff.; cf. *supra* p. 53. n. 1.

<sup>3</sup>[Xen.] *Pol. Ath.* 3. 1-4.

<sup>4</sup>On the jurisdiction of the different magistrates, cf. M.S.L. pp. 53 ff.

seem to have lent themselves to dishonest practice, for Aristotle, in his account of the later court system, describes precautions intended to prevent the corruption of the lesser court functionaries.<sup>1</sup> In the fourth century also it was possible to bribe the officials who set the time for trials. The rich, according to Demosthenes, were able to get their cases appointed for any time they desired, and to come before the court only after their offenses had been palliated by the lapse of time, while the common citizen was haled before a tribunal immediately and judged forthwith.<sup>2</sup> While Demosthenes may have had in mind delays such as are secured on technical grounds by shrewd lawyers in our modern courts, it seems more likely, in view of the statement of the Pseudo-Xenophon, that he refers to bribery of magistrates. Diopithes, who acted as arbitrator in *Pittalacus vs. Hegesander and Timarchus*, favored his friend Hegesander by putting off the case from time to time, until it was finally dropped by Pittalacus.<sup>3</sup>

In the case of an arbitrator, attempts might also be made to influence the final decision by bribery or persuasion. In *Demosthenes vs. Midias*, an action *κακηγορίας*, the public arbitrator Straton had given a judgment by default in favor of the plaintiff. Midias endeavored to persuade Straton to change his award and the archons to alter the record in the case, at first trying bribery and then having recourse to threats. When the arbitrator would not listen to him, he carried out his threats in a most effective manner. On the last day on which charges could be preferred against the arbitrators, he brought an accusation against Straton, and succeeded, with the collusion of the presiding magistrate, in securing a judgment by default, with the result that Straton was disfranchised.<sup>4</sup> When officials who declined to favor influential men could be visited with such terrible punishment, it is not likely that many of them showed the courage of Straton,

<sup>1</sup>*Cons. Ath.* cols. 31. 14; 33. 10-15.

<sup>2</sup>*Dem.* 21. 112.

<sup>3</sup>Aeschines 1. 63; cf. *supra* p. 26. n. 3. On delays secured by Midias in a suit for ejectment brought by Demosthenes, cf. *Dem.* 21. 81-82. See also *Lys.* 26. 6 ff.

<sup>4</sup>*Dem.* 21. 83 ff.

and there must have been many cases where arbitrators were induced improperly to favor litigants.<sup>1</sup>

Again, interest with court officials at times afforded an opportunity for tampering with the records or the documents, or for irregularities in procedure. Callimachus was accused of having brought a second time, with the connivance of the magistrate, an action which had once already been thrown out of court by a *διαμαρτυρία*. The legitimate proceeding would have been to bring a *δίκη ψευδομαρτυρίων* against his opponent's witness, but he wished to avoid any chance of incurring the *ἔπωβελία*.<sup>2</sup>

Nicobulus, in the speech *Against Pantaenetus*, asserts that one of the items has been stricken out of the *παραγραφή*; how this was managed it is the part of the jury to consider.<sup>3</sup> This is a distinct allegation that his opponent has acted with the collusion of the magistrates who had it in charge.<sup>4</sup>

A case of irregular procedure, with the connivance of a presiding magistrate, is found in the action of Midias against the arbitrator Straton mentioned above.<sup>5</sup> Midias did not present the necessary evidence that the defendant had been summoned to appear, but got the presiding officer to overlook the irregularity and a judgment by default was entered. This of course deprived Straton of an opportunity to appear and defend himself, and he had apparently no means of redress after having become subject to *atimia*.<sup>6</sup>

The choregus who was charged with having caused the death of the boy Diodotus was accused by his opponents of having

<sup>1</sup>Cf. [Dem.] 34. 21, where an arbitrator will not decide against a friend, and [Dem.] 52. 30-31, where an arbitrator favors a litigant who is his "associate" (14).

<sup>2</sup>Isoc. 18. 11-12. See M.S.L. p. 844. n. 221. The legal details are obscure.

<sup>3</sup>Dem. 37. 34. See M.S.L. p. 849. n. 231: "Der Sprecher beschwert sich hier, das ihm in seiner *παραγραφή* etwas ausgestrichen worden sei, und zwar von seinem Gegner, wahrscheinlich jedoch nur auf dessen Veranlassung von der Behörde, hier den Thesmotheten."

<sup>4</sup>Two features in the Herodes case suggest that there may have been improper practice on the part of magistrates but details are not given. The defendant was cited in a *δίκη κακοουργίας* instead of a *δίκη φόνου* (Ant. 5.9), which gave the prosecution an advantage (11 ff.), and was improperly refused bail (17).

<sup>5</sup>Cf. *supra* p. 91.

<sup>6</sup>Dem. 21. 87.



used his interest with the archon basileus to put a stop to the proceedings connected with a former indictment on the same charge.<sup>1</sup>

In *Archestratides vs. Alcibiades*, the advocate of the prosecution protests against the action of the generals, who apparently were not preserving the impartiality which they should have displayed as presidents of the court, and were pleading in behalf of the defendant.<sup>2</sup>

Club affiliations were undoubtedly of great advantage to a litigant in securing interest with officials, whether by bribery or other means, as associates could supply the money for bribes or could assist in persuading or intimidating magistrates. It is therefore extremely probable that both Midias and Pantaenetus were aided by their comrades in the cases of improper practice with which they were concerned.<sup>3</sup>

#### INFORMATION REGARDING OPPONENT'S CASE

An accurate knowledge of the opponent's case and plan of attack must have been of vital importance to a litigant in preparing for trial. When the trial was preceded by a hearing before an arbitrator, the evidence on both sides would of course be disclosed. But in non-arbitration cases the litigant would have to rely upon the information which he could pick up before the hearing.<sup>4</sup> Any information regarding his opponent's circumstances and career would be welcome, and especially valuable would be hints of the exact nature of the attack or defense contemplated, the number and standing of the advocates, the nature of the evidence, etc.

Obviously, friends and associates could render valuable service by gathering all available information on such points and placing it at the disposal of the litigant. While there are few specific allusions to this proceeding, it can hardly be doubted that it was one of the ways in which the clubs were useful.<sup>5</sup>

<sup>1</sup>Ant. 6. 41. On this case, see *supra* pp. 49 ff., 73.

<sup>2</sup>[Lys.] 15. 1 ff.

<sup>3</sup>Cf. *supra* p. 23. n. 2; p. 79. n. 5.

<sup>4</sup>Bonner (pp. 48 ff.) has shown that no considerable part of the evidence was brought out at the anacrisis. See also Bonner "Evidence in the Areopagus" *Class. Phil.* VII. (1912) pp. 451 ff.

<sup>5</sup>Cf. [Dem.] 53. 14; cf. Dem. 19. 332; 20. 105, which may be merely rhetorical.

## MISCELLANEOUS EXPEDIENTS

In general, the practices which have been described were available in a large class of cases, often in litigation of any kind. But there were undoubtedly other ways in which associates and friends could be of use when the circumstances of particular cases afforded opportunity for concerted action.

An interesting example of club activity which does not admit of definite classification is found in *Nicobulus vs. Pantaenetus*.<sup>1</sup> The defendant in the *παραγραφή* came up to Nicobulus just as the trial was about to begin, after the court-rooms had been assigned, and surrounded him with a crowd of his associates. He then read him a long challenge, which Nicobulus accepted, although he felt it was unfair, since he was annoyed and confused by the haste with which the matter was thrust on him and by the crowd which accompanied Pantaenetus. In violation of the agreement, as he understood it, Pantaenetus summoned him for a second suit on the same charge. Afterwards, when they were about to carry out the terms of the challenge, Pantaenetus produced a document containing an agreement quite different from the one he had read. This he was able to do because Nicobulus, in his haste and confusion, had not read the document before he sealed it, but had depended upon what he heard Pantaenetus read. The entire transaction was greatly to the discomfiture of Nicobulus. The account contains much that is obscure from a legal standpoint,<sup>2</sup> but two facts stand out clearly. The proceeding was entirely successful in annoying Nicobulus, to his opponent's consequent advantage, and its success was largely due to the associates of Pantaenetus, who joined in "badgering" and confusing Nicobulus.<sup>3</sup>

## TYPES OF CLUBS REPRESENTED

The attempt to define and classify the different types of clubs which are found engaging in litigation would be as unprofitable as to undertake a similar categorical exposition of the social, political, and industrial organizations which interest themselves in the legal proceedings of our own day. It may be noted, how-

<sup>1</sup>Dem. 37. 39 ff.

<sup>2</sup>Sandys and Paley, notes *ad loc.*; Kennedy IV. p. 237. n. 2.

<sup>3</sup>Cf. *supra* p. 79. n. 5.

ever, that they conform in some degree to a number of general types.

The majority of the clubs which appear in litigation seem to have been the ordinary social-political clubs studied in the opening chapters, organizations of men who were drawn together by some mutual interest of a rather general nature, and who made use of this affiliation to defend themselves from legal attacks or to assail enemies. It has been seen that in many of these clubs the social element was important, as in the clubs of Conon and his sons and that of Andocides and Euphiletus. The extent of the club's participation in lawsuits would of course depend upon the habits and temperaments of its members. Many clubs of quiet men, ἀπράγμονες, devoted to good fellowship, would engage in litigation only on unavoidable occasions, when a member was obliged to go to law and demanded the support of his associates. But those whose members were of a litigious or quarrelsome nature must have been constantly in the courts. Good examples of this type are the clubs of Midias and of Conon and his sons.

An entirely different kind of club is found in those organizations which were based upon some specific interest that the members had in common. In this class were the business and trade associations, such as the company of tax-farmers which aided in the prosecution of Andocides. In their case, litigation would be merely incidental to their business operations. No doubt the organizations of grain-dealers and traders in the Piraeus took part in litigation upon occasion.<sup>1</sup> In that event, they would undoubtedly employ the means that other clubs found successful. We have seen, in the case of the tax-farmers' company, that the basis of these temporary organizations for specific operations was sometimes association of long standing.<sup>2</sup>

The clubs of sycophants and professional pettifoggers, like Meneclēs, Mnesicles, and Melas, were a factor of great importance in the Athenian judicial and political system.<sup>3</sup> They existed

<sup>1</sup>Dem. 32. 10 ff.; Lys. 22.

<sup>2</sup>Cf. *supra* p. 44. n. 1.

<sup>3</sup>Leisi (p. 119) discusses the clubs of professional pettifoggers. His view that the club of Meneclēs and Mnesicles and that of Melas were merely temporary cabals formed for the particular lawsuits in which they figure, I cannot accept (See Ziebarth p. 93). The former is spoken of as a definite, organized group of men with leaders ([Dem.] 40. 9), which makes a practice of prosecutions (39. 13-14), and whose other members Boeotus habitually aids in different suits (*Ib.* 18; cf. *supra* pp. 79 ff.).

for the profit of the members, unscrupulous men who made their cleverness in legal tactics a means of livelihood and who found strength in organization. In this class should probably be placed the clubs which men like Nicostratus and Xenotimus must have made use of in bribing juries and assemblies. It is improbable that such men would limit their roguery to any one proceeding, and we must believe that Meneceles, Mnesicles, and men of their kind would not hesitate to bribe a jury if opportunity offered, and likewise that Nicostratus and Xenotimus would not refrain from introducing perjured testimony when it would serve their purpose. These clubs may not have been numerous, but their influence must have been out of all proportion to their number, since they were at the disposal of anyone who was willing to pay for their services. Theocritus and Agoratus, the two notorious informers who worked together, seem to have belonged to an organization of this kind,<sup>1</sup> and one of the allegations answered by Lysias' client, the crippled tradesman, is that such a club of sycophants makes his shop its headquarters.<sup>2</sup>

When Boeotus affiliated himself with this "gang" (ἐργαστήριον), he was of course entitled to their support in the litigation against his father. This may have been his object in joining, for he seems to have been incited by Meneceles (cf. *supra* p. 80. n. 4), but there is nothing to indicate that he organized the club (cf. Sandys and Paley note to [Dem.] 40. 9 and Kennedy to 39. 2; κατασκευάζω, παρασκευάζω frequently occur in the sense of "to get the services of," usually with evil suggestion; cf. Wyse, note to Isaeus 8. 3. 4). The language of the speaker implies that Boeotus is still a member, and the club is referred to as if it were still well known (*loci cit.*). Similarly the club of Melas (Μέλανος... καὶ τῶν ἐκείνου φίλων, Isaeus 5. 8) seems to have been a definite, known group; while the evidence here is less precise, yet the words τὰ ψευδῆ ἀλλήλοις μαρτυρεῖν suggest that this same group was engaged in more than one suit, and there is no evidence that it was a temporary union for this case alone. Such passing alliances, however, were no doubt frequently entered into. The combination gotten up by Theopompus in his suit for the estate of Hagnias ([Dem.] 43. 7 ff.; cf. *supra* p. 88. n. 1) was apparently of this character. De Vos devotes several pages (46-51) of his work *De sycophantia* to "*sycophantarum consociationes*," and quotes a number of passages which indicate that sycophants were accustomed to work together. The most important passages he has missed entirely, and he apparently knows nothing of the club of Meneceles and Mnesicles, which is probably the most important club of sycophants of which we have knowledge. He considers whether these clubs of sycophants are to be regarded as hetaerics, and, although he does not possess nearly all the evidence, nevertheless comes to a reasonable and sound conclusion: "perhibemus tamen fieri potuisse ut huius illiusve ἐταιρείας socii vel omnes vel plerique sycophantae essent, ita ut hoc sensu dici possit exstitisse ἐταιρείας quoque sycophantarum. (p. 51)

<sup>1</sup>Lys. 13. 19: ὁ δὲ Θεόκριτος οὗτος ἐταῖρος ἦν τῷ Ἀγοράτῳ καὶ ἐπιτήδειος. Cf. *supra* pp. 83-84.

<sup>2</sup>Lys. 24. 19.



## CHAPTER IV

## THE CLUBS IN THE POLITICAL FIELD

## INTRODUCTORY

The most casual consideration of the phrase in which Thucydides describes the clubs, *συνωμοσῖαι ἐπὶ δίκαις καὶ ἀρχαῖς*, "associations for the management of lawsuits and elections," makes it apparent that their activities in the political field could not have been limited to the narrow sphere which a literal translation of *ἐπὶ ἀρχαῖς* would indicate, and that Thucydides is using this phrase of their political endeavor as a convenient way of suggesting the whole. This fact, which is recognized by almost every commentator on the passage, is admirably expressed by Grote, when he speaks of the clubs as existing "partly for purposes of amusement, but chiefly pledging the members to stand by each other in objects of political ambition, in judicial trials, in accusation or defense of official men after the period of office had expired, in carrying points through the public assembly, etc."<sup>1</sup> It will be the aim of this chapter to explain in detail, so far as possible, the workings of the clubs in the political field and the methods which they employed. The starting point for any investigation of the subject is of course Thucydides' sketch of the oligarchic revolution which was planned and executed by the clubs in 411. This is supplemented by the accounts of the second oligarchic revolution in which the clubs took part, and by other instances of club activity which are occasionally described by the historians and the orators.

The viewpoint of the historian, broader and more philosophic than that of the pleader in a private case, creates a tendency to record general results rather than detailed methods. In the picture thus presented, which includes the whole of Athens rather

<sup>1</sup>VI. p. 246. It is a remarkable testimony to the keen political sense of Grote that his characterization of the clubs conveys a more correct and complete idea of their methods and aims than is to be found in any of the special treatises, although he has made no attempt to consider all of the evidence.

than a few individuals or groups of individuals, perspective requires that the clubs loom less large and less near than in the detailed studies of the orators. Our acquaintance with them is less personal and intimate, and they appear only as the parts of a political organization which was great and powerful enough twice to dominate the Athenian state completely. But this loss is more than compensated by the fact that we have as a starting point a careful and reliable description of the clubs working together in the political field, a number of cases of amply attested and undeniable club activity.

#### LITIGATION AS A POLITICAL WEAPON

The connection between the litigious and the political activities of the clubs becomes clear when it is remembered that in Athens the law courts were a common medium of political attack, and litigation a weapon of tremendous efficiency and adaptability.<sup>1</sup> This use of the courts was the result of conditions peculiarly characteristic of the Athenian judicial system.

1. *The absence of a public prosecutor.*—There was no provision in ordinary procedure for the initiation of prosecutions by the state.<sup>2</sup> Proceedings against public offenders originated with individuals, who were actuated in great part by personal feeling and for whom the interests of the commonwealth were incidental to the attainment of their own ends. Personal or political hostility came to be recognized as a valid and proper motive for the accuser in a public prosecution: "The words which are commonly spoken in public trials," says Aeschines,<sup>3</sup> "are not untrue, as it seems, for private enmities lead to the correction of a great many public wrongs."

2. *The existence of laws or parts of laws framed in general*

<sup>1</sup>The political use of litigation is tacitly recognized in every study of Athenian politics. Headlam (pp. 35-37) briefly states the fact, but gives little information regarding the way in which lawsuits were used.

<sup>2</sup>With few exceptions, public actions could be instituted by any citizen who possessed the franchise (cf. M.S.L. pp. 199 ff.; Lipsius *A. R.* pp. 31, 237 ff.; Gilbert *Cons. Ant.* p. 404).

<sup>3</sup>Aeschines 1. 2. Cf. Lys. 12. 2; 13. 1; [Dem.] 58. 1 ff.; 59. 1; Dem. 22. 1; 24. 6-8; [Dem.] 53. 1. See *supra* p. 86. n. 1; Bonner p. 83, for hostility as a reason for acting as advocate. The frank enunciation of this motive is due to the desire of litigants to avoid the appearance of being sycophants (cf. [Dem.] 53. 1, with Sandys's note).

*terms.*—Certain laws, usually those which dealt with offenses of a political character, contained clauses couched in general or indefinite terms and capable of being applied in a great variety of cases.<sup>1</sup> In addition, during the greater part of the fifth century, prosecution by *eisangelia* was permitted in the case of political offenses which were not covered by existing laws.<sup>2</sup> The theoretical intent of these general provisions was no doubt to insure to the popular courts that wide jurisdiction which was essential to their efficiency as the bulwark of democratic government. In practice, however, they invited abuse, and the actual result of their existence was that it became impossible for any citizen, however exemplary his life and public career, to be secure from prosecution.

3. *The latitude allowed in the introduction of evidence and in pleading.*—The Athenian tribunals, with the exception of the Areopagus, allowed the utmost freedom in pleading and in the introduction of evidence. The rules against irrelevant evidence were lax, and there was no adequate provision for their enforcement. Consequently an accuser was not restricted to the point at issue, but was free to attack the whole life and career of the defendant, of his relatives and even his ancestors, and was permitted to employ personal abuse of the coarsest and most vulgar type.<sup>3</sup> His advocates (*συνήγοροι*) could make any statements they wished, and were neither required to prove their assertions nor held responsible for the truth of their allegations.<sup>4</sup> Consequently, it often happened that a case was not decided upon its merits, but the defendant was called upon to answer for every peccadillo of his whole career.

4. *The character of the jury.*—The Athenian juries, large bodies of untrained men, selected at random from the enfranchised citizens of proper age, and empowered to decide questions

<sup>1</sup>E. g. the law *ἀπατήσεως τοῦ δήμου* (cf. M.S.L. pp. 424-25; Lipsius A. R. p. 381) and the law *ἀδικίας πρὸς τὸν δήμον* (cf. M.S.L. p. 426; Lipsius A. R. pp. 43, 380). Compare the simplification of the laws by the Thirty (*Ar. Cons. Ath.* 35. 2) and the account of the Solonian laws contained in Aristotle (*ib.* 9. 2; but cf. *Dem.* 20. 93).

<sup>2</sup>Cf. Lipsius A. R. pp. 194-95; Thalheim ("Zur *Eisangelie* in Athen" *Hermes* XXXVII. p. 343) places the enactment of the νόμος *εἰσαγγελτικός* in the year 411; Caillemet (*D. & S. Dict. Ant.* II. pp. 498 ff.) assigns it to the archonship of Euclides.

<sup>3</sup>Cf. Bonner pp. 12 ff., 14 ff., 18-19.

<sup>4</sup>Cf. *supra* p. 87; Bonner pp. 83-84.

of law as well as of fact, were in reality sections of the ecclesia, and were imbued with the prejudices and factional sympathies which often determined the decisions of that body. Under the influence of these prejudices, led by the impulse of the moment, and encouraged by the feeling of irresponsibility which their number gave, they not infrequently disregarded the law, general equity and justice, and even the facts in the case, in their verdicts.<sup>1</sup> Such courts offered an inviting field of activity to skillful orators and politicians, who knew the weaknesses and prejudices of the populace from having traded upon them in the ecclesia.

5. *Opportunities for machination.*—The opportunities for influencing the administration of justice have been discussed in detail.<sup>2</sup> To the politician who enjoyed the immense advantage in litigation conferred by a club or a group of faithful adherents, these constituted a strong encouragement to attack opponents in the courts.

These conditions made it possible for any Athenian, either in person or through an agent, to institute proceedings against a political antagonist, to bring him before an irresponsible, impulsive jury, and there to assail his whole life, his domestic relations, his personal character and disposition, and his political record, with abuse of the most violent kind. The success of the attack depended not so much upon the justice of the charge as upon the political strength of the accuser, and if he could count upon one-fifth of the votes he ran not the slightest risk. It is no wonder then that the courts became the arena for the settlement of political differences, and that litigation was employed to an extent which has not been equaled elsewhere in history.

The most important and striking of these political prosecutions aimed at nothing less than the death or utter ruin of the party leaders against whom they were directed. A case is noted as early as 489, when Miltiades, the conqueror of Marathon, was tried before a popular court on a capital charge.<sup>3</sup> A quarter of a

<sup>1</sup>Lys. 19. 6; Isoc. 18. 9-10; 15. 21-23; and the satire in Aristoph. *Wasps* 548 ff. See also Beloch *Attische Politik* pp. 8-12; Bonner p. 13; Gilbert *Cons. Ant.* pp. 415-16; Bury p. 350; Merry *Wasps* int. p. xi. For the selection of jurors, cf. *supra* p. 65. n. 2.

<sup>2</sup>Cf. *supra* pp. 40-96.

<sup>3</sup>Xanthippus, the leader of the popular party (*Ar. Cons. Ath.* 28. 2), accused Miltiades, upon the latter's return from Paros, of having deceived the demos, and proposed the penalty of death. A conviction



century later his son Cimon was the object of a similar attack.<sup>1</sup> During this period Ephialtes, the popular leader, was finding in litigation a most effective weapon for his onslaught on the Areopagus.<sup>2</sup> The condemnation of Pericles,<sup>3</sup> that of Alcibiades,<sup>4</sup>

resulted and a fine of fifty talents was imposed (Hdt. 6. 136; Plato *Gorg.* 516E; cf. M.S.L. p. 425; Busolt II. pp. 599-600).

<sup>1</sup>Cimon, who had succeeded his father as leader of the aristocratic party (*Ar. Cons. Ath.* 28. 2), was accused by the opposition at his audit of having received bribes from Alexander of Macedon. Pericles was the principal accuser, and, although he failed to secure a conviction, this was the commencement of his political career (*Plut. Cim.* 14; *Ar. Cons. Ath.* 27. 1; cf. Vischer *Kleine Schriften* I. pp. 35 ff.; Busolt III. pp. 254 ff.)

<sup>2</sup>The plan of attack followed by Ephialtes, at that time head of the popular party (*Ar. Cons. Ath.* 28. 2), was to get the more prominent members of the Areopagus out of the way by prosecutions before the heliastic courts, and thus to prevent any effective opposition to the measures of 462/1 by which the council was deprived of most of its political powers (*Ar. Cons. Ath.* 25. 1-2; *Plut. Per.* 10 *fin.*, 9 *fin.*; cf. Busolt III. pp. 262-3). These attacks must have extended over a considerable space of time, as both Pericles and Themistocles are mentioned as having aided in them (On the chronology, and the impossibility of Themistocles' having been in Athens in 462, cf. Sandys's note to *Ar. Cons. Ath.* 25.3).

<sup>3</sup>The opposition to Pericles came from two sources, from the aristocratic and conservative party which disapproved of his war policy, and from the radical democracy led by Cleon (*Thuc.* 2. 65. 2; *Hermippus* in *Plut. Per.* 33; cf. Busolt III. pp. 822 ff.; *Beloch* pp. 20 ff.). Its increasing strength had been tried in a number of indirect attacks in the courts previous to 430 (*Plut. Per.* 31 ff.; *Diod. Sic.* 12. 39; cf. *Beloch* p. 21; Busolt III. pp. 825 ff.). In that year, the terrible suffering caused by the plague brought the popular dissatisfaction to a focus; the opportunity could not be neglected (*Thuc.* 2. 59, 65. 1-2). Pericles, who had been re-elected general at the beginning of the summer (cf. Swoboda "Ueber den Process des Perikles" *Hermes* XXVIII. p. 545; Busolt III. p. 939. *Beloch* [*A. P.* pp. 25, 231] and Gilbert [*Beiträge* p. 118] believe that he failed of re-election.), was deposed from office (*Plut. Per.* 35; *Diod. Sic.* 12. 45. 4; cf. Busolt III. p. 949) and put on trial. A verdict was obtained by his opponents, probably on a count of embezzlement (*Plato Gorg.* 515E-516A), possibly also for accepting bribes (cf. Busolt III. p. 954. n. 1), and he was subjected to a heavy fine (*Thuc.* 2. 65. 4; cf. Busolt III. p. 955. n. 1). For the special discussions on the chronology, legal details, etc., etc., questions which are not pertinent to the present investigation, cf. Busolt III. p. 939. n. 4, 949. n. 1; Swoboda p. 537. n. 3; for a collation of the ancient sources, cf. Schmidt *Perikleische Zeitalter* I. p. 173. n. 1.

<sup>4</sup>The identity of the Hermocopids and the motives which prompted them (cf. *supra* pp. 24, 30, 35.) do not enter into the present inquiry, which is directed toward the attack upon Alcibiades, the virulence of which led Grote to conclude that the deed was deliberately planned with his ruin in view (*VI.* pp. 8 ff., 48 ff.; cf. Whibley *Political Parties* pp. 89-90). In the midst of the terror and indignation which followed the discovery of the outrage (*Thuc.* 6. 27. 3, 53. 3, 60. 1), the enemies of Alcibiades accused him of complicity in this and other acts of sacrilege (*Thuc.* 6. 28; *Isoc.* 16. 6 ff.; *Plut. Alc.* 19 ff.; cf. Busolt III. pp. 1293 ff.). His popularity with the army, his relations with Argos, and the general respect

of the generals who won at Arginusae,<sup>1</sup> of Cleophon,<sup>2</sup> were the result of attacks by political opponents. From the expulsion of the Thirty on through the fourth century, trials of this kind were so numerous that it is impossible to catalogue even the more important. The courts were the recognized medium of attack, and were constantly deciding cases for which political antagonism was chiefly responsible. For example, the orator Aristophon

for his military ability made it inadvisable to press the charge at the time (Thuc. 6. 29; Plut. *Alc.* 19), but it was revived after the departure of the expedition for Sicily and he was recalled (Thuc. 6. 61, 53; Isoc. 16. 7-8; Plut. *Alc.* 20-21). Upon his failure to appear for trial, both he and a number of his close adherents were condemned to death *in absentia* and the most fearful curses invoked against them (Thuc. 6. 61. 7; Plut. *Alc.* 22 *fin.*), while many of his following at Athens were executed and others forced to flee (Isoc. 16. 8). This attack, like that upon Pericles, emanated from two widely different sources, from the popular leaders, represented by Androcles, who saw in Alcibiades a dangerous rival and an obstacle to the attainment of their ambition, and from the aristocratic party, represented by Thessalus the son of Cimon (Thuc. 6. 28. 2; Plut. *Alc.* 19, 22; Isoc. 16. 5 ff.; cf. Busolt III. pp. 1287 ff.; Beloch p. 59. Droysen ["Des Aristophanes Vögel und die Hermokopiden" *Rh. M.* IV. pp. 39 ff.]; Vischer [p. 177]; Grote [VI. pp. 8 ff.; 43-48]; Rospatt [pp. 65 ff.]; Goetz [pp. 547 ff.], and Whibley [*Political Parties* p. 90] emphasize the part taken by the oligarchs; Gilbert [*Beiträge* pp. 252 ff.], and Meyer [*Gesch. des Allertums* IV. p. 504], attribute it rather to the democratic leaders).

<sup>1</sup>Grote, while characterizing the summary condemnation of the generals as "an act of violent injustice and illegality," accounts for it partly on psychological grounds and partly on the assumption that the generals were guilty of culpable neglect. He finds no trace of political machinations, and believes that Theramenes was actuated solely by motives of self-preservation (VI. pp. 409. n. 1; 414 ff.). Other scholars regard the generals as innocent and the attack upon them as the beginning of the oligarchic intrigues which culminated in the tyranny of the Thirty (cf. Vischer pp. 198 ff.; Büchner pp. 84 ff.; Whibley *Political Parties* p. 91; and the discussions cited by Herbst *Die Schlacht bei den Arginusen* [Hamburg: 1855] n. 82. For still other explanations cf. Busolt III. p. 1599. n. 3). The reality probably lies between these extremes. Political animus played its part, and political leaders stirred up the popular indignation to the point where justice was disregarded (Xen. *Hell.* 1. 7. 8, 13 ff., 35; Plato *Apol.* 32B; Diod. Sic. 13. 101. 6-7, 102. 5, 103. 2; cf. Busolt III. p. 1598; Beloch pp. 87-88). On the other hand, the efforts of politicians would have accomplished little had there not been as a basis for their agitation a great deal of genuine indignation (Diod. Sic. 13. 101. 6), and proof of an oligarchic plot is totally lacking. Theramenes was undoubtedly influenced by anger and considerations of self-preservation, but his conduct may also be accounted for on grounds of political interest (cf. Busolt III. p. 1598; Beloch pp. 84-85, 86-89). The movement against the generals seem to have been the result of an alliance between the faction formerly headed by Alcibiades and the extreme democrats, as the generals for the most part belonged to the moderate democracy (cf. Beloch pp. 84 ff.).

<sup>2</sup>Cf. *supra* pp. 65-66; *infra* pp. 105-106.

is said to have been indicted seventy-five times by *graphe paranomon* alone,<sup>1</sup> and Demosthenes asserts that for a time he was himself arraigned every day on some accusation preferred by members of the opposing party.<sup>2</sup> Every general, we are told, was tried two or three times upon a capital charge.<sup>3</sup> Accusations and indictments were the stock in trade of the clever politician.<sup>4</sup>

While it was of course advantageous for the accusation to have a basis of fact, it was not essential. In a majority of cases the truth or falsity of the charge mattered little; the real issue was political.<sup>5</sup> The verdict of the court was determined by the relative popularity of the defendant and the accuser, the acceptability of their respective policies, the political strength each could command, their services to the state in the past, and the need for their services in the present. The essential prerequisite of success was the ability to recognize an opportunity and to strike quickly. The great political attacks were carefully timed. Miltiades was accused after the reverse at Paros; Pericles was assailed at a moment when the plague had reduced the populace to despair and frenzy; Alcibiades was denounced amid the terror and indignation caused by the mutilation of the *He mae*; the accusers of the generals after Arginusæ recognized the psychological moment and acted promptly.<sup>6</sup> Suits were often brought, when no chance of striking a final blow offered, in the hope of embarrassing or partially discrediting an opponent. In this event, the statesman who was the object of attack might be made defendant in person, but not infrequently one of his adherents

<sup>1</sup>Aeschines 3. 194.

<sup>2</sup>Dem. 18. 249.

<sup>3</sup>Dem. 4. 47; cf. 8. 17; 20. 79. In view of the fact that most of the political prosecutions of which we have knowledge were directed against generals, orators, or *προστάται*, Headlam seems to have been led into an overstatement (p. 36) in his desire to make the political use of the courts the result of election by lot.

<sup>4</sup>Dem. 8. 69, 71; cf. 36. 53, and the parody in Aristoph. *Knights* 710-11. The fragmentary sentence with which the speech against Xenothemis closes contains what seems to be a statement that Demosthenes himself has avoided the usual tactics (32. 32).

<sup>5</sup>Headlam pp. 36-37.

<sup>6</sup>Thus Aeschines waits for a reverse to use against Demosthenes (Dem. 18. 308); cf. Dem. 19. 3; [Dem.] 26. 17.

or friends was selected.<sup>1</sup> These suits, in addition to plunging the person against whom they were directed into the embarrassment and trouble inseparable from litigation, served a two-fold purpose: First, they made an opportunity for the dissemination of slanderous reports similar to the modern "campaign lie;"<sup>2</sup> second, they were tests of strength, to be followed by more serious attacks in the event of a favorable outcome.<sup>3</sup> The man against whom the suit was really directed could and frequently did appear for the defense, and in that case it was in reality the advocate and not the defendant who was on trial.<sup>4</sup>

Another political use of litigation is exemplified by those suits which were intended to prevent or obstruct the enactment of legislation. These usually took the form of an indictment for proposing illegal measures (*γραφὴ παρανόμων*) or an inexpedient law (*νόμον μὴ ἐπιτήδειον θείναι*) against the speaker who made the objectionable proposal.<sup>5</sup> If the indictment was sustained in court, the obnoxious legislation was conclusively defeated. In many cases, however, proceedings of this character seem to have been intended only to render the measure attacked inoperative until a pronouncement of the courts could be had.<sup>6</sup> Threats of an indictment for illegal measures were at times employed to deter speakers.<sup>7</sup> Prosecutions upon other charges also were convenient weapons, and suits or threats of suits could be used to dispose of opposition to a measure.<sup>8</sup>

Similar tactics were resorted to in order to influence officials,

<sup>1</sup>E. g. the attack upon Demosthenes in the person of Ctesiphon (Aeschines 3; Dem. 18), and the prosecutions of Phidias, Anaxagoras, and Aspasia, which were really aimed at Pericles (Plut. *Per.* 31-32; cf. *supra* p. 101. n. 3; Busolt III. pp. 825 ff.).

<sup>2</sup>This is seen in the slanderous stories about Pericles, which were given wide currency at the trials of himself and his friends (Plut. *loc. cit.*), as well as in the content of speeches made in political cases (cf. Dem. 18. 9 ff.). Such stories were of course not necessarily untrue.

<sup>3</sup>Plut. *Per.* 31: *ποιοῦμενοι πείραν ἐν ἐκείνῳ.*

<sup>4</sup>E. g. Pericles' appearance for Aspasia (Plut. *Per.* 32; Athen. 13. 589E), and Demosthenes' speech for Ctesiphon, in which the language throughout is that of an actual defendant (cf. 5 ff.).

<sup>5</sup>Cf. Lipsius A. R. 383 ff.

<sup>6</sup>This seems often to have been the purpose in the period of the law's abuse, when it was invoked against one man seventy-five times (Aeschines 3. 194; cf. Grote IV. pp. 459 ff.).

<sup>7</sup>Xen. *Hell.* 1. 7. 12.

<sup>8</sup>Xen. *Hell.* 1. 7. 13; Lys. 13. 12-22, esp. 12 and 17.



and prosecutions or threats to prosecute were a means of constraining the officers who put motions to the vote.<sup>1</sup>

The politician who attacked his adversary in the courts had a great advantage in that he could generally count upon the assistance of other enemies of the defendant, who would avail themselves of the opportunity to make a concerted attack.<sup>2</sup>

Not infrequently these political prosecutions were entrusted to agents. There were two reasons for such a course—either the men responsible for the attack did not wish their connection to appear,<sup>3</sup> or they were unwilling to expose themselves to the dangers and inconveniences of litigation.<sup>4</sup> Suitable agents might be found in associates and political friends, or, if it was inexpedient for these to appear openly, sycophants could be hired.

This political use of litigation opened up a wonderful field of activity for the clubs. Organizations like these, familiar with the tricks of the law-courts and habituated to the various kinds of manipulation that have been studied, were invaluable to the political leader at every stage of his career. Therefore it is not surprising to find that the oligarchic revolutions which the clubs engineered were preceded by a series of political prosecutions directed against democratic officials by the leaders of the oligarchic party and their agents.<sup>5</sup>

The possibilities of the political suit are particularly to be seen in the revolution of 404. Opposition to the carrying out of the revolutionary program was effectually crushed by a series of prosecutions brought against the democratic leaders. First Cleophon, the reigning demagogue, was cited before a court made up of oligarchic sympathizers and was condemned and exe-

<sup>1</sup>Plato *Apol.* 32B; Aeschines 3.3; Xen. *Hell.* 1. 7. 14-15; cf. Thuc. 6. 14, with Arnold's note; Nicias endeavors to anticipate just such coercion as was attempted with Socrates.

<sup>2</sup>Dem. 39. 3 (For Mantias' official career, cf. Sandys and Paley, note *ad loc.* and on the hypothesis); 21. 205. Cf. Dem. 21. 23.

<sup>3</sup>Dem. 18. 249.

<sup>4</sup>And. 2. 4.

<sup>5</sup>Keil ("Das System des Kleisthenischen Staatskalenders" *Hermes* XXIX. pp. 337 ff., esp. 339-40) has shown that the proceedings against Philinus and other officials instituted by the speaker in the Choreutes case (cf. *supra* pp. 49 ff., 73.) were part of a series of prosecutions, perhaps directed by Antiphon, by which the oligarchs sought to pave the way for their final assault upon the democracy. See also Wilamowitz II. pp. 347; Busolt III. p. 1411. n. 5.

cutted, ostensibly for desertion of post, "but in reality because he spoke against \* \* \* tearing down the walls."<sup>1</sup> Shortly thereafter, Strombichides, Dionysodorus, Eucrates, and others of the more influential politicians who had combined to resist the oligarchic movement were arrested on trumped-up charges and in course of time were put to death, in order that they might not speak in the assembly against the program which the oligarchic conspirators had arranged.<sup>2</sup> So convenient was this method of dealing with opponents that the hundreds of virtual assassinations which made the brief tyranny of the Thirty notorious were cloaked by a simulation of legal procedure.<sup>3</sup>

In the preceding revolution, circumstances were not so favorable for this form of attack, and violence was more usually employed,<sup>4</sup> but its advantages were not altogether neglected. Provision was made for a summary legal process which might be invoked against any citizen who attacked a speaker for proposing illegal measures.<sup>5</sup> After the installation of the Four Hundred in

<sup>1</sup>Lys. 13. 12; for the procedure, cf. *supra* pp. 65-66.

<sup>2</sup>Lys. 13. 13 ff. (esp. 17); 18. 5; 30. 12-14. Lysias represents the accusation and arrest of these men as having taken place during the time that elapsed between the return of Theramenes and the holding of the assembly which accepted the peace, only one day, according to Xenophon (*Hell.* 2. 2. 21-22). His account is objected to by Grote (VI. p. 455. n. 1) and others on two grounds: First, that one day was too short a time for the events narrated to have taken place; second, that it would have been impossible before the surrender to convey the ship bearing Agoratus through the Lacedaemonian blockade. Granting that Xenophon's statement of the time is correct, both objections can be met. Boerner (*De rebus a Graecis, etc.* pp. 46 ff.) has shown that the organization of resistance to the peace program was perfected prior to the return of Theramenes, and that the oligarchs could have made all necessary counter-preparations in advance; the accusations and arrests could have been carried out in a day. This swift and secret action was not inconsistent with the methods of the clubs. As regards the second objection, Xenophon says nothing of a blockade against *outgoing vessels*; the Lacedaemonian fleet inhibited the *entrance of vessels* (εἰσπλε τοῦ εἰσπλου) in order to prevent the importation of food. Had circumstances been otherwise, so patent a misstatement as is attributed to Lysias here would scarcely have escaped his hearers. If, however, Lysias did confuse the order of events, and the arrests did take place subsequently to the surrender, they still antedated the meeting of the assembly at which the Thirty were chosen, for the informations were laid before the old boule (Lys. 13. 20) and served to stifle opposition to the further proceedings of the clubs. The motive remains the same.

<sup>3</sup>Cf. *infra* p. 109.

<sup>4</sup>Cf. *infra* p. 108.

<sup>5</sup>Thuc. 8. 67. 2; Ar. *Cons. Ath.* 29. 4; cf. Dem. 24. 154. As no prosecutions under this decree are mentioned, it is likely that the democrats

the council house, a number of the surviving democratic leaders were executed, imprisoned, or banished.<sup>1</sup> The inclusion of the two last-named penalties strongly suggests that some legal form was observed in passing and executing sentence, as was afterward the practice of the Thirty.<sup>2</sup>

Not only did the clubs use the courts in attacking opponents, but they were often called upon to defend their own members from similar assaults. Thus the associates came to the aid of Eratosthenes when he was prosecuted for his connection with the Thirty.<sup>3</sup> In the proceedings against Theoclines, of which the principal issues were political, clubs were associated with the defense.<sup>4</sup> The associates of Cimon, Pericles, and Alcibiades no doubt rallied to their defense when they were assailed in the courts.<sup>5</sup>

#### ASSASSINATION

Political assassinations were of common occurrence in the Greek cities,<sup>6</sup> and were not unknown at Athens, where the procedure in homicide cases made it comparatively easy for a slayer to escape the death penalty.<sup>7</sup> This mode of getting opponents out of the way is particularly associated with the clubs on account of the large number of assassinations for which they were responsible during the two oligarchic revolutions.

The revolution of 411 was marked by assassinations from the start. At Samos, the associates, led by the general Charminus and aided by Samian oligarchs, assassinated the demagogue Hyperbolus and probably others of the democrats.<sup>8</sup> While the

had already been so thoroughly terrorized by the violence of the club element (cf. *infra* pp. 107-108) that no opposition to the oligarchic speakers was attempted.

<sup>1</sup>Thuc. 8. 70. 2.

<sup>2</sup>The substitution of the oligarchic machinery for the popular courts would be sufficient justification for the expression *κατὰ κράτος*.

<sup>3</sup>Cf. *supra* pp. 83, 88.

<sup>4</sup>Cf. *supra* pp. 85, 89-90.

<sup>5</sup>On these clubs, cf. *supra* pp. 19. n. 1; 18. n. 5; 18. n. 6.

<sup>6</sup>E. g., the wholesale assassinations at Corcyra (Thuc. 3. 81).

<sup>7</sup>Assassins would be proceeded against under the law punishing premeditated homicide, and could avoid the penalty by going into exile (cf. Gilbert *Cons. Ant.* p. 387). Aristarchus, accused of having assassinated Nicodemus, went into exile (Aeschines 1. 172).

<sup>8</sup>Thuc. 8. 73. 3; ἄλλα . . . τοιαῦτα, in the opinion of Grote (VI. p. 257. n. 1), refers to other assassinations.

deed was intended partly as a pledge of good faith among the conspirators,<sup>1</sup> its primary purpose was the removal of an opponent whom they had good reason to fear. In Athens, after the clubs had joined forces at the solicitation of Pisander, the younger associates organized themselves into a band to which were entrusted undertakings that involved violence.<sup>2</sup> Their first move was secretly to assassinate Androcles, the most influential of the democratic orators, who was a bitter opponent of oligarchy and the personal foe of Alcibiades, together with other prominent democrats.<sup>3</sup> This band of assassins was then used to stifle opposition in the assembly and boule, for every speaker who dared to raise his voice against the oligarchic program was promptly and secretly put to death, and so cowed was the populace that no attempt was made to seek out and punish the guilty parties.<sup>4</sup> After the formal establishment of the Four Hundred in the senate house, some few of the surviving democratic leaders were made away with, but in these cases it appears that a semblance of legal procedure was observed.<sup>5</sup>

Again in 404 the leaders of the oligarchic organization found it advisable to "remove" the most influential men of the popular party before proceeding to the consummation of their plans,

<sup>1</sup>Cf. *supra* p. 35.

<sup>2</sup>Thuc. 8. 65. 2: *ἐυστάντες τινὲς τῶν νεοστρίων*. These young *ἐταῖροι*, the assassins of Androcles and others, are the *νεανίσκοι* of 8. 69. 4 (Classen note to 69. 4) and probably of 92. 6. It is difficult to understand the application to them in the former place of the term *Ἕλληνες* in certain MSS, unless, as Arnold and Jowett believe (notes *ad loc.*), it is to distinguish them from the regular attendants of magistrates, who were slaves of barbarian race, generally Scythians. I am inclined to regard the word, which is not found in two of the best MSS (BC), and is bracketed by most editors, as the interpolation of a copyist who confused these young men with the non-Athenian hoplites mentioned just above (69.3). Grote, who thinks that this band of young men was collected from the Grecian cities, bases his opinion chiefly upon a reluctance to believe "that Athenian citizens would be employed in repeated acts of such a character." (VI. p. 261. n. 1) He makes a serious error, however, when he refers to this hypothetical non-Athenian retinue the assassination of Androcles and others, for in this case the young men are expressly stated to be *ἐταῖροι* (Thuc. 8. 65. 2), and the acts described took place prior to the bringing of the Grecian hoplites to Athens. For the young associates and the suspicion with which they were viewed by the populace, see the satire in Aristoph. *Wasps* 342 ff., with Starkie's note. Cf. also Aristophanes' jests about Cleon's retinue of "young leather-sellers" and their treasonable designs (*Knights* 852 ff.).

<sup>3</sup>Thuc. *loc. cit.*

<sup>4</sup>Thuc. 8. 66. 2; cf. Plut. *Alc.* 26.

<sup>5</sup>Thuc. 8. 70. 2; cf. *supra* pp. 106-107.



and after the establishment of the Thirty they continued to make away with those whom fear, avarice, or personal enmity suggested. During their brief tenure of power they were responsible for the deaths of over fifteen hundred persons, if the estimate of Isocrates and Aeschines is to be accepted.<sup>1</sup> In general they did not employ the secret methods of the Four Hundred, but the assassinations were thinly veiled by a pretended adherence to legal forms, and the victims were executed on the strength of false informations laid by creatures of the oligarchs.<sup>2</sup> In some cases, however, assassination pure and simple seems to have been employed, for the Thirty, like the Four Hundred, had a band of reckless young men to whom undertakings which involved violence could be entrusted.<sup>3</sup> On at least one occasion, the pretended "trial" of Theramenes, preparations were made for actual assassination, if it should prove necessary, and there is little doubt that, if the senate had persisted in its opposition, Theramenes would have been struck down on the spot by the daggers of the young associates assembled by Critias.<sup>4</sup>

An earlier instance of a political assassination, is found in the death of Ephialtes in 462/1. Whatever the uncertainty regarding the identity of the actual assassin,<sup>5</sup> there can be no doubt as to the instigators of the deed. Ephialtes had attacked in the courts and convicted many individual members of the Areopagus, and had shorn that council, the last remaining bulwark of the aristocracy, of its most important functions; he was hated and feared by the councillors individually and collectively, and they

<sup>1</sup>Isoc. 7. 66-67; 20. 11; Aeschines 2. 77; 3. 235; cf. Xen. *Hell.* 2. 4. 21.

<sup>2</sup>Lys. 12. 48; 6. 45. Cf. Grote VI. pp. 459 ff., 466 ff., and *supra* pp. 105-106.

<sup>3</sup>Xen. *Hell.* 2. 3. 23, 50, 55. The young *ἑταῖροι* are distinguished from the members of the Spartan garrison (55): *τοὺς ἐπὶ τοῖς ὀρυβάκτοις. . . τὸ ἔμπεσον τοῦ βουλευτηρίου πλήρες τῶν φρουρῶν.* Cf. Grote VI. p. 471.

<sup>4</sup>Xen. *Hell.* 2. 3. 23 ff. Kenyon reconciles this account with that of Aristotle (*Cons. Ath.* 37. 1) by the assumption that the second of the two laws mentioned by Aristotle (one of the *καινοὶ νόμοι* [51] of Xen.) was proposed by Critias and passed on the spot by the terrified boule (Cf. Kenyon's and Sandys's notes to *Ar. Cons. Ath.* 37. 1).

<sup>5</sup>Aristotle (*Cons. Ath.* 25. 4) quoted by Plutarch (*Per.* 10 *fin.*) names Aristodicus of Tanagra as the agent of the assassination. The account of Idomeneus, which accuses Pericles of being responsible, is rejected by Plutarch (*loc. cit.*) as a slander. The statement of Antiphon (5. 68 ff.) that in his time the identity of the assassins was not known, may be justified on the assumption that no one was ever legally proved to have committed the crime.

or some of their party procured his death at the hands of an assassin.<sup>1</sup> The ancient accounts give no details, and it is impossible to determine whether it was the act of a club or clubs, or whether individuals were responsible. There can be no doubt, however, that among the Areopagites were members of oligarchic clubs,<sup>2</sup> and that some of those clubs, like the organizations which engineered the later anti-democratic movements, would not shrink from foul play.

The assassination of Cimon, the father of Miltiades, by the sons of Pisistratus seems to have been primarily a political move.<sup>3</sup> Whether associates of the tyrants were implicated, it is impossible to say; the language of Herodotus suggests that the actual agents were hired assassins.<sup>4</sup>

On one notable occasion, the democrats assailed the oligarchs with their own weapons, and Phrynichus was struck down by the dagger of the assassin.<sup>5</sup> The deed had been planned previously at secret meetings of the democratic leaders held in the home of the peripolarch and at other houses.<sup>6</sup> These gatherings may have been meetings of a democratic hetaery, or simply a conspiracy entered into for the time being. In a period of such suspicion and unrest, however, it is unlikely that men who were not known and trusted through previous association would have been admitted as confederates, and the loyal remainder of a democratic club or clubs may well have afforded a nucleus for the conspiracy.<sup>7</sup>

A number of other assassinations which took place at Athens

<sup>1</sup>This is clearly implied in the account of Aristotle (*loc. cit.*), and explicitly stated by Plutarch (*loc. cit.*). See Busolt III. p. 246. For the attacks of Ephialtes on the Areopagus, cf. *supra* p. 101. n. 2.

<sup>2</sup>Not only was the Areopagus the last remaining bulwark of the oligarchs (Ar. *Pol.* 1273 b 39), but many of the individual members were oligarchs (cf. Busolt III. p. 262. n. 1; Wilamowitz II. p. 93). Vischer (pp. 162 ff.) regards this assassination as the work of oligarchic clubs.

<sup>3</sup>Hdt. 6. 103: κτείνουσι . . . ὑπείσαντες αὐτοῦ. Cimon had long been a political opponent of the Pisistratids (*loc. cit.*).

<sup>4</sup>For the clubs of the tyrants, cf. *supra* p. 13.

<sup>5</sup>Thuc. 8. 92. 2 ff.; Lys. 13. 71; CIA I. 59; cf. Plut. *Alc.* 25; Lyc. in *Leocr.* 112. Thrasybulus and Apollodorus apparently were the agents, cf. Gilbert *Beiträge* pp. 320 ff.

<sup>6</sup>Thuc., Lys. *loci cit.*

<sup>7</sup>Democratic clubs would have been demoralized and rendered inactive by the extensive desertions to the ranks of the oligarchs (Thuc. 8. 66. 5).

have elements of political significance, but there is no evidence that clubs were concerned.<sup>1</sup>

In a majority of the cases where clubs were responsible, it has been seen that associates actually did the slaying. Their usefulness was not, however, limited to these cases, for they might assist by furnishing money to hire assassins, or by finding out men who would be willing to do the deed. It was at times more convenient to employ agents, and particularly men of non-Athenian citizenship, since aliens would feel less reluctance in going into exile than would an Athenian.<sup>2</sup>

It will be noted that but few of these assassinations were dictated by general political enmity. They were usually to further a definite purpose, and were frequently a means of preventing speakers of the opposition from addressing the *ecclesia* or *boule* in regard to legislation.

#### DELIBERATIVE ASSEMBLIES

As the political life of Athens centered in the deliberative assemblies and particularly in the *ecclesia*, which was the supreme authority in all matters of public policy, it is here that the usefulness of the clubs in the political field is best exemplified. As evidence of this usefulness it is necessary to cite only the two memorable occasions on which they completely controlled the *ecclesia* and *boule*, once by perfect organization alone, and again with that organization backed by Spartan arms—the revolutions of 411 and 404.

1. *Caucuses*.—The first step to be taken by a club or a combination of clubs which sought to control an assembly was the holding of a caucus among the members, or leaders who represented them, at which a definite plan of action would be adopted and the instructions for carrying it out imparted.

Thucydides describes two such caucuses at Samos when the revolution of 411 was begun by the clubs. The first was held by the oligarchic leaders when they returned from their interview

<sup>1</sup>The murder of Nicodemus by Aristarchus (Aeschines 1. 172 ff.; 2. 148; Dem. 21. 104; cf. Ulpian to Dem. 21. 104; Athen. 13. 592); of the brother of Theocrines by Demochares ([Dem.] 58. 28 ff.).

<sup>2</sup>The assassins of Ephialtes and Phrynichus seem to have been non-Athenians (cf. *supra* 109. n. 5; 110. n. 5).

with Alcibiades and formed the conspiracy among the associates for the overthrow of the democracy.<sup>1</sup> Without doubt it was at this meeting that the form of the statement to the rank and file of the army was fixed and the speakers chosen who were to present it.<sup>2</sup> At the second caucus, not only the leaders but a majority of the associates as well were present.<sup>3</sup> The proposals of Alcibiades were discussed, it was resolved to proceed with the revolution, and Pisander and others were chosen to visit Athens and address the ecclesia in behalf of the proposed government.<sup>4</sup> While in Athens, Pisander effected among the clubs in the city an organization similar to that at Samos.<sup>5</sup> Whether he addressed entire clubs at meetings or merely conferred with the club leaders is not stated. From that time on, as occasion required, were held caucuses at which the speakers who were to present measures in the boule and ecclesia were chosen and their speeches carefully considered.<sup>6</sup> It was probably at these caucuses that plans for influencing the voting, for the "removal" of opposing orators, and for carrying out the remainder of the revolutionary program were formulated and instructions given. One of these caucuses must have preceded the *coup* by which the Four Hundred were installed in the senate house.<sup>7</sup>

Again in 404 the associates worked out their plans at secret meetings, but on this occasion a system of organization which made unnecessary large and unwieldy caucuses of all the clubmen had been perfected. A central committee composed of five "ephors" was chosen, and this met and deliberated regarding the measures to be passed and the offices to be filled. This board was given a general "power to act."<sup>8</sup> The "ephors" in turn appointed lieutenants called "phylarchs," who communicated their decisions and orders to the clubmen.<sup>9</sup> When the assembly for the adoption

<sup>1</sup>8. 48. 2. The words *αἰθις . . . ἐσκόπουν* (48.3) seem to indicate that this first caucus was limited to the leaders of the associates.

<sup>2</sup>The statement was no doubt made at an assembly of the soldiers, which was virtually a section of the ecclesia, although absent from Athens.

<sup>3</sup>8. 48. 3.

<sup>4</sup>8. 48. 4-7, 49.

<sup>5</sup>8. 54. 4.

<sup>6</sup>8. 66. 1.

<sup>7</sup>8. 69.

<sup>8</sup>Lys. 12. 43-44.

<sup>9</sup>Cf. Thalheim's note *ad loc.*



of the new constitution was held, the plans which had previously been decided upon at the caucuses of the "ephors" were carried out by the clubmen, pursuant to instructions.<sup>1</sup>

An interesting parallel to these proceedings of the clubs is found in the *Ecclesiazusae* of Aristophanes.<sup>2</sup> In the fictitious *coup d'état* by which the comic poet's heroines got control of the state, two caucuses were held by the conspirators. At the first, held at the Scira, it was decided to make the attempt and the preliminary steps were arranged.<sup>3</sup> At the second, held just before the meeting of the ecclesia, speakers were tested and Praxagora was chosen by general consent, the content of her speech was approved, and final instructions regarding applause, voting, etc., were imparted.<sup>4</sup>

The complete domination of a deme meeting of the Halimusians by Eubulides and his club, with the aid of other interested parties, could hardly have been effected without the preliminary caucus or caucuses implied in the words *οἱ τούτῳ παρεσκευασμένοι*.<sup>5</sup>

Andocides represents his club as having deliberated in regard to the mutilation of the Hermae while assembled at a drinking party.<sup>6</sup> Such gatherings were doubtless convenient occasions for consultation among the associates, as their apparently convivial character would tend to avert the suspicion which naturally attached to the meeting of a number of men for an unknown purpose.<sup>7</sup>

2. *Speeches and Pamphlets*.—The degree of formality which characterized discussion by associates in caucus would be determined by the size and character of the gathering. Thus we may believe that the debate between Euphiletus and Andocides

<sup>1</sup>Lys. 12. 75-76.

<sup>2</sup>The description of this imaginary conspiracy and the steps by which the women got control of the ecclesia is, with allowance for its comic character, an illuminating commentary on the tactics of the clubs, and will be referred to frequently.

<sup>3</sup>Aristoph. *Eccl.* 17-18, 57 ff.

<sup>4</sup>*Ib.* 116-284.

<sup>5</sup>Dem. 57. 8-14. Cf. *supra* p. 23. n. 3.

<sup>6</sup>And. 1. 61.

<sup>7</sup>Headlam (p. 35) has remarked upon the suspicion with which secret meetings were regarded (cf. And. 1. 38-39). The deliberations of the aristocratic club "Ploutis" at Miletus, held on shipboard, show how essential to concerted political action is the secret caucus. See *supra* p. 38.

regarding the mutilation of the Hermae, which took place at a social meeting of their small club, was very informal in character.<sup>1</sup> On the other hand, Phrynichus made an address of some length in the large caucus at Samos, to judge from the summary given by Thucydides,<sup>2</sup> and the speech of Andocides *To the Associates* seems to have been a somewhat pretentious composition addressed to the membership of the oligarchic clubs.<sup>3</sup> These more formal discussions of important questions were no doubt passed from club to club in written form.<sup>4</sup> Of this literature intended for a strictly limited circulation we have an interesting specimen in the pamphlet *On the Polity of the Athenians* which is preserved among the works of Xenophon.<sup>5</sup> This brochure, like the address of Andocides, was evidently intended, not for the general public, but for an audience of aristocratic sympathizers.<sup>6</sup>

This esoteric literature corresponds in content and aims to the deliberative speeches made in caucus. There were in addition pamphlets which served the same purpose as the public addresses made by associates, namely, the advancement of policies favored by the clubs. To this class probably belonged the

<sup>1</sup>And. 1. 61; cf. *supra* pp. 24, 35.

<sup>2</sup>Thuc. 8. 48. 4 ff.

<sup>3</sup>Plut. *Them.* 32; cf. *supra* p. 8. n. 6; see Drerup [HPΩΔΟΥ] ΠΕΡΙ ΠΟΛΙΤΕΙΑΣ, *Ein politisches Pamphlet aus Athen 404 vor Chr.* (Paderborn: 1908) pp. 110-11.

<sup>4</sup>Such large meetings as were held by the associates in 411 (cf. *supra* pp. 111-12.) were manifestly impracticable under ordinary conditions, as they would have excited popular suspicion, and secrecy could have been attained only with great difficulty (cf. *supra* p. 13. n. 7). It is likely, therefore, that speeches addressed to a number of clubs would be circulated in writing and read at meetings of the different clubs. Andocides' speech *To the Associates*, for example, which contained bitter invective against the demos (Plut. *Them.* 32: παροξύνων τοὺς ὀλιγαρχικοὺς), could not well have been delivered at a large meeting, but must have been circulated in this secret manner (Jebb has shown [I. pp. 136-37] that it must have been written before 415, while the oligarchic activities still took the form of secret intriguing; cf. Plut. *Nic.* 11 *med.*).

<sup>5</sup>There can be little doubt that in this work we have a genuine political pamphlet of the fifth century (cf. *supra* p. 67. n. 3; Drerup p. 110; Blass I. pp. 276 ff.; Busolt III. pp. 609 ff., esp. p. 613. n. 1). Kalinka in his edition (p. 3) explains it as a rhetorical exercise, a view which I cannot accept. Belot in his edition (Paris: 1880) attempts to show that it was a letter written by Xenophon to Agesilaus in 378. For the many theories which have been advanced in regard to the authorship and purpose of this document, see the works cited by Busolt, l. c., and Kalinka pp. 8 ff.

<sup>6</sup>The author is evidently a member of the aristocratic, if not of the extreme oligarchic, party, and his brochure is addressed to those of like views and not to the general public. See Croiset *Aristophanes* p. 16.

λοιδωρίαι of Antiphon<sup>1</sup> and some if not all of the party pamphlets of Critias.<sup>2</sup> The treatise *περὶ πολιτείας* which has come down under the name of Herodes belongs properly to this period, and may possibly have originated with one of the Athenian clubs of moderate views.<sup>3</sup> The far reaching influence of the literature which emanated from oligarchic and moderate circles may be seen in the historical portions of the Aristotelian *Constitution of Athens*.<sup>4</sup>

3. "Packing" Assemblies.—After the plan of action had been mapped out and each associate instructed in the part he was to take, the next step was the "packing" of the assembly with the club members. I use this word to designate the introduction into an assembly of a body of men instructed and pledged to act in concert, and without implying that they constituted a majority of those present.

Such a body of associates, with full instructions, was introduced by the oligarchic leaders into the ecclesia which adopted the constitution of the Thirty.<sup>5</sup> Although numerically outnumbered by the democratic ecclesiasts, their solid vote, rendered doubly effective by the fear with which the presence of the Lacedaemonians inspired their opponents, carried the day.<sup>6</sup> In

<sup>1</sup>Plut. *Alc.* 3; cf. Athenaeus XII. p. 525B (on the confusion of title, cf. Sauppe *O. A.* II. p. 144; M. S. L. p. 632). The pamphlet was directed against Alcibiades, and seems to have been written about 418 (see Blass I. p. 106). The essay *On Concord*, which Grote thought was a speech delivered to the Four Hundred (VIII. p. 94), should probably be ascribed to the sophist Antiphon (Blass *Antiphon* [ed. 2] pp. 136-37; Jebb I. p. 68).

<sup>2</sup>See Blass I. pp. 263 ff.; Wilamowitz pp. 174 ff.

<sup>3</sup>This work has been clearly shown to be a political brochure of the late fifth century (Drerup pp. 36-123; see also Meyer *Theopomps Hellenika* [Halle: 1909] pp. 259 ff.), and may possibly, as Drerup thinks (pp. 86 ff.), have been composed by some adherent of Theramenes at Athens.

<sup>4</sup>In many parts of his narrative, Aristotle seems to be quoting from oligarchic or moderate party pamphlets (Sandys *Int.* pp. lxxvii ff.; Wilamowitz I. pp. 161 ff.), and following an author or authors variously identified as Critias (Dümmler "Die Ἀθηναίων Πολιτεία des Kritias" *Hermes* XXVII. pp. 260 ff.), Theramenes (Wilamowitz *loc. cit.*), and an adherent of Theramenes (v. Mess *Rh. M.* LXVI. pp. 356 ff.). See Nissen "Die Staatsschriften des Aristoteles" *Rh. M.* XLVII. pp. 193 ff., esp. 196: "Aristoteles hat nicht das athenische Staatsarchiv für die Pentekontaetie ausgebeutet, sondern jene überaus merkwürdige wirksame Litteratur von Flugschriften, die in der Noth des peloponnesischen Krieges in die Welt flatterten." Cf. *supra* p. 22.

<sup>5</sup>Lys. 12. 72, 75-76.

<sup>6</sup>*Loc. cit.* It is the orator's policy to avoid imputing responsibility

the previous revolution, also, there can be no doubt that the oligarchic clubs introduced their full strength into the ecclesia, although we are specifically informed only with regard to the speakers.<sup>1</sup>

When Alcibiades urged the advisability of the Sicilian expedition in the ecclesia at which Nicias and the peace party endeavored to secure the repeal of the psephism which had been passed, he was aided by *παρακληυστοί*, young men especially summoned to his support in the ecclesia,<sup>2</sup> who were no doubt members of his club or of other clubs which had taken a similar political stand.<sup>3</sup>

Eubulides "packed" a deme meeting of the Halimusians with members of his club and others whose interest it was to support him in his attack on Euxitheus.<sup>4</sup> By waiting until late in the day when most of the members had left, this clique was able to control the meeting.<sup>5</sup>

In the *Ecclesiazusae*, Praxagora "packs" the ecclesia with her cohorts of women conspirators disguised as ecclesiasts.<sup>6</sup> By a variation of the scheme which Eubulides employed, the women fill the assembly before the majority of the ecclesiasts have arrived, and are thus able to control the situation.

Instances of "packed" assemblies which cannot be connected with clubs testify to the practice and illustrate its workings. At the meeting of the ecclesia which decided the fate of the generals after Arginusae, Theramenes and the other leaders of the attack introduced a large following, composed partly of friends and relatives of the dead, and partly of their own political adherents.<sup>7</sup> In the ecclesia which considered the case of the Locrians in 339, Aeschines and his party were supported by an organized body of adherents, introduced especially for the occasion.<sup>8</sup>

to the demos. It is, however, improbable that the club element constituted an actual majority.

<sup>1</sup>*Infra* p. 119.

<sup>2</sup>Thuc. 6. 13. 1.

<sup>3</sup>Cf. *supra* p. 18. n. 6.

<sup>4</sup>Dem. 57. 10 ff.; *supra* p. 23. n. 3.

<sup>5</sup>Cf. *infra* p. 124. Timocrates was said to have rushed a law through the assembly when most of the Athenians were celebrating a holiday (Dem. 24. 47; cf. 26).

<sup>6</sup>376 ff.

<sup>7</sup>Xen. *Hell.* 1. 7. 8; Diod. Sic. 13. 101. 6-7.

<sup>8</sup>Dem. 18. 143, with Kennedy's note.



4. *Canvassing and bribery in assemblies.*—The “eleventh hour canvass,” the individual appeal to the members of an assembly just prior to the opening of a session, was a service of great importance and some difficulty, which could be entrusted to the entire body of associates or to a selected number, as circumstances made advisable.<sup>1</sup> When the revolt against the Four Hundred began, and the hoplites from the Piraeus were occupying the Anaceum, delegates from the oligarchs came and pleaded with them “man to man” and “tried to persuade whatever influential men they saw both to keep quiet themselves and to restrain the others.” They promised to publish the “Five Thousand,” to select the Four Hundred from that body by turns, and while this was being arranged to make no hostile or treasonable move. Apparently, an assembly of the hoplites similar to that which had just been held at the Piraeus was convoked as the result of this canvassing, for a number of speeches were made on both sides and an agreement reached.<sup>2</sup> Again in the second oligarchy, we meet the same proceeding. Before convening the boule to pronounce upon the fate of Theramenes, the oligarchs interviewed the members “individually and in private” and tried to prejudice them against him.<sup>3</sup>

As in the case of juries,<sup>4</sup> these individual appeals could be made to those sitting near even after the session had begun. Such an attempt to prejudice the ecclesiasts Nicias fears from the associates and partisans of Alcibiades, when he cautions the older men not to be influenced by the young *παρκελευστοί* who are sitting near them and induced to vote for war for fear of being considered effeminate.<sup>5</sup>

The existence among the citizens of a purchasable element, by no means inconsiderable, has been noted.<sup>6</sup> It is therefore

<sup>1</sup>The clubs were undoubtedly able to exert a tremendous influence upon public sentiment at all times, and many of the stories and slanders regarding men in public life seem to have originated with them, as the result both of conscious propaganda and of the daily “gossip” of the associates (see Croiset *Aristophanes* p. 14). It has seemed best to consider only the canvassing which took place immediately before assemblies, in regard to which the evidence is somewhat precise.

<sup>2</sup>Thuc. 8. 93. 2-3.

<sup>3</sup>Xen. *Hell.* 2. 3. 23.

<sup>4</sup>Cf. *supra* p. 71. n. 2.

<sup>5</sup>Thuc. 6. 13. 1.

<sup>6</sup>Cf. *supra* p. 66. n. 4.

not surprising to find that bribery was not infrequently the means employed to win over ecclesiasts. Isocrates, in a speech delivered in 355, speaks of a lamentable prevalence of bribery, particularly in elections,<sup>1</sup> and about ten years later Aeschines describes a number of prosecutions against men "who are undertaking to bribe the ecclesia and the courts as well," some of whom have already been convicted and put to death.<sup>2</sup> The inscription in honor of the slayers of Phrynichus contains a clause authorizing a judicial investigation into the bribery of ecclesiasts which took place in connection with the decree in honor of Apollodorus.<sup>3</sup> The problem of bribing the ecclesia was similar to that of bribing a jury under the later system, that is, it was necessary to corrupt a sufficient number to insure a majority of the ecclesiasts who served in the particular session.<sup>4</sup> There was the same necessity for agents who knew what men could be safely approached, and for organization.<sup>5</sup> As the same man was at once ecclesiast and, potentially, dicast, the agent who could deliver votes of dicasts could deliver votes of ecclesiasts. Such men as Xenotimus and Nicostratus, then, were at once jury bribers and bribers of the ecclesia, as Aeschines observes.<sup>6</sup> Their clubs and those of the professional sycophants like Meneclis and Mnesicles<sup>7</sup> would be the ones which made a business of bribing assemblies. Where bribery was the means employed in winning votes in the ecclesia, the contributions of money made by associates would be of use, and associates might aid in conducting the negotiations, either with professional bribers or with the ecclesiasts direct.

<sup>1</sup>Isoc. 8. 50. The orator is of course speaking primarily of the bribery of electors, but the electors were potentially both ecclesiasts and dicasts. Cf. *supra* p. 68. n. 2; *infra* p. 132. n. 2.

<sup>2</sup>Aeschines 1. 86-88. Baron (p. 375) misinterprets this passage in attempting to limit the statement to juries.

<sup>3</sup>CIA I. 59. For the correct interpretation of the situation set forth in this decree, cf. Gilbert *Beiträge* pp. 346-48. Szanto's conjecture (*Untersuchungen über d. att. Bürgerrecht* pp. 14 ff.) that the grant of citizenship to Apollodorus was nullified by a *graphe paranomon*, while very probable, is still but a conjecture, and the attempt to refer the bribery mentioned in the decree (lines 40 ff.) to this trial and to supply missing parts of the inscription in accordance (Dittenberger I. 50. 45 ff.), is doubly uncertain and calls for supporting evidence.

<sup>4</sup>Cf. *supra* pp. 70 ff.

<sup>5</sup>Cf. *supra* pp. 75 ff.

<sup>6</sup>Aeschines 1. 86.

<sup>7</sup>Cf. *supra* pp. 79 ff., 95 ff., esp. 95. n. 3.

5. *Speeches in assemblies.*—Individual associates, whether they represented a club, a combination of clubs, or a party leader, could introduce and could support legislation in debate.

In 411, during the period which intervened between the formation by Pisander of the inter-club federation at Athens and the formal installation of the Four Hundred, the boule and ecclesia, which were still democratic in membership and form, were addressed by speakers chosen from among the associates, whose speeches had been carefully reviewed beforehand.<sup>1</sup> Antiphon, who is generally credited with having been the master-mind of the organization, made it his fixed policy not to appear in person, and seems to have entrusted the speeches in the boule and the ecclesia to these representatives of the associates.<sup>2</sup> Pisander, who moved the adoption of the oligarchic constitution,<sup>3</sup> had already acted as orator for the associates on a previous occasion, when he was among the men chosen by the revolutionists at Samos to visit Athens and address the ecclesia.<sup>4</sup> Again, in the revolution of 404, the board of five "ephors" who decided what measures were to be enacted by the assembly no doubt also selected the speakers who were to propose and support them, as did the associates in the earlier revolution.<sup>5</sup> Dracontides of Aphidna was the one chosen to move the adoption of the oligarchic constitution on this occasion, and his speech was supported by Theramenes, as well as by the Spartan commander.<sup>6</sup> As early as 561/60 we have an instance of this service, when Ariston introduced in a popular assembly the motion to grant Pisistratus a body-guard.<sup>7</sup> Pericles in particular made his associates useful in this way. He is said to have appeared before the demos but seldom, and to have reserved his speeches for crucial occasions, transacting ordinary business through orators who were his polit-

<sup>1</sup>Thuc. 8. 66. 1.

<sup>2</sup>8. 68. 1-2.

<sup>3</sup>8. 68. 1.

<sup>4</sup>8. 49, 53.

<sup>5</sup>Lys. 12. 43-44.

<sup>6</sup>12. 73; Ar. *Cons. Ath.* 34 *fin.*

<sup>7</sup>Ar. *Cons. Ath.* 14. 1; Plut. *Solon* 30. We are not told that Ariston was a *ἑταῖρος* of Pisistratus, but it is unlikely that Pisistratus would have entrusted such a momentous undertaking to one who was not a *ἑταῖρος* (cf. *supra* p. 13. n. 3).

ical friends and associates.<sup>1</sup> Among these are mentioned Ephialtes, the assailant of the Areopagus,<sup>2</sup> Charinus, who introduced the Megarian decree,<sup>3</sup> and Metiochus, Menippus, and Lampon, who held various offices during his regime.<sup>4</sup> The leading opponent of Pericles, Thucydides of Alopece, also had in his hetaery a number of orators who introduced and advocated in the assembly the measures of the opposition, notably those directed against Pericles.<sup>5</sup> Among the orators who supported Alcibiades in advocating the Sicilian expedition were probably members of his club.<sup>6</sup> The associates of Nicias seem to have served him by making speeches in the ecclesia.<sup>7</sup> Aristides, who is said not to have belonged to a club,<sup>8</sup> often found it necessary to employ the club methods and to introduce his measures through the agency of political friends and adherents.<sup>9</sup> In opposing legislation, associates could of course render the same service. There were no doubt occasions when a desire for secrecy, or some other consideration, made it inexpedient for the members to appear in person. In such cases, speakers could be procured, as was done by the enemies of Alcibiades when they sought the postponement of his trial,<sup>10</sup> for there seem to have been in Athens at all times orators who were willing to introduce and advocate measures for hire.<sup>11</sup>

It was often quite as essential that members of the opposition should be deterred from speaking against a measure as that it should be well supported, and here again associates could be of service. The use of litigation and of violence in getting rid of

<sup>1</sup>Plut. *Per.* 7 *fin.*; *Reip. Ger.* 811CD, 812CD; cf. *supra* p. 18. n. 5.

<sup>2</sup>Plut. *Per.* 7 *fin.*; *Reip. Ger.* 812D.

<sup>3</sup>*Ib.* 812D.

<sup>4</sup>*Ib.* 811F, 812D.

<sup>5</sup>Plut. *Per.* 14; cf. *supra* p. 19. n. 2.

<sup>6</sup>Plut. *Per.* 20; cf. *supra* p. 18. n. 6.

<sup>7</sup>Plut. *Nic.* 5; cf. *supra* p. 19. n. 3.

<sup>8</sup>Plut. *Arist.* 2.

<sup>9</sup>*Ib.* 3.

<sup>10</sup>Thuc. 6. 29. 3; Plut. *Alc.* 19 *med.*

<sup>11</sup>Aristotle thinks it worth noting that Ephialtes was ἀδωροδόκηνος (25. 1). The allegation of bribery in Lysias 13. 72 is confirmed by epigraphical evidence (CIA I. 59) to the extent that the name of Agoratus is found in the decree (cf. Gilbert *Beiträge* p. 348). Cf. also Dem. 20. 132; 23. 146; 24. 3, 201, 203.



speakers has been discussed.<sup>1</sup> Intimidation at times proved effective. Both in 411 and 404, when the oligarchic measures were being put through the boule and ecclesia, democratic orators who would normally have raised their voices in opposition were kept silent by fear,<sup>2</sup> but this may have been merely the result of previous acts of violence and not of specific threats. Bribery and persuasion offered a means of silencing opposition which clubs could make use of upon occasion.

Speeches and motions sometimes had for their purpose consumption of time and the consequent prevention or postponement of the voting upon a measure, a practice in some respects similar to what is now termed "filibustering."<sup>3</sup> In the deme meeting, Eubulides deferred the voting upon the citizenship of Euxitheus until a late hour by "making harangues and introducing resolutions."<sup>4</sup> As it is hardly likely that a presiding officer would have been permitted to take up the whole session with his own speeches and motions, the reference must be in part to speeches made by his associates and confederates, who would be able with his connivance to hold the floor.

6. *Interruptions and applause.*—The more prominent members of the opposition, sitting in the vicinity of the bema, would often attempt to confuse a speaker and destroy the impression he had made by questioning him and offering objections to his arguments. As an example of this, we have the action of Pisander, when he called up the speakers who opposed the proposals of the associates in the ecclesia, questioned them individually, and forced them to admit that they were able to offer no solution of the difficulty.<sup>5</sup> In the ecclesia which considered the equipment of the Sicilian expedition, Nicias was challenged in the same way, at the conclusion of his speech, by a supporter of Alcibiades.<sup>6</sup> Demostratus, as Plutarch states,<sup>7</sup> Whether Demostratus was one of Alcibiades'

<sup>1</sup>Cf. *supra* pp. 98 ff.; 107 ff.

<sup>2</sup>Thuc. 8. 66. 2; Plut. *Alc.* 26; *Lys.* 12. 72.

<sup>3</sup>*Webster's International Dictionary*, s. v. Filibuster: "To delay legislation or action in an assembly by dilatory motions or other artifices."

<sup>4</sup>Dem. 57. 9: κατέτριψε τὴν ἡμέραν δημηγορῶν καὶ ψήφισματα γράφων.

<sup>5</sup>Thuc. 8. 53. 2.

<sup>6</sup>*Ib.* 6. 25. 1.

<sup>7</sup>Plut. *Nic.* 12 *fin.* The name may be taken, as Busolt thinks (*III.* p. 1282. n. 3), from Aristoph. *Lys.* 387 ff.

associates we do not know. But he was, like Alcibiades, a man of noble family who had elected to enter public life as a leader of the democracy,<sup>1</sup> and may well have belonged to his club, or another of similar character.

The way in which these interruptions, at first no doubt proposed in an orderly manner, degenerated into the mere abuse and ridicule that are now termed "heckling" is illustrated by several cases. In the ecclesia which received the report of the second embassy to Philip in 346, Demosthenes, when he attempted to answer the speech of Aeschines, became the target for such attacks. Aeschines and Philocrates, standing by the bema, one on one side and one on the other, shouted and jeered at him, until the ecclesiasts, laughing at their witticisms, would not suffer him to speak.<sup>2</sup> The following specimen of their ridicule he gives: "'Athenians,' I said, 'if any of this comes true, be sure you praise and honor and crown these men, and not me; but if it turns out differently, let them feel your resentment. I am out of it altogether.' 'Don't be out of it now,' said Aeschines interrupting, 'mind you don't want to be in it another time.' 'Certainly,' said I, 'or I should be acting unfairly.' At which Philocrates rose in a flippant manner and said, 'No wonder, men of Athens, that I and Demosthenes agree not in opinion; for he drinks water and I drink wine'—and you laughed."<sup>3</sup> In the *Acharnians*, Dicaeopolis comes to the ecclesia prepared "to shout, to interrupt, to jeer at the orators if anyone speaks on any other topic than peace."<sup>4</sup> And throughout the session he interrupts the speakers with comments and mockery strikingly similar, if allowance be made for the comic character of the scene, to the interruptions of Philocrates and Aeschines.<sup>5</sup> Praxagora, when she practices for her speech in the ecclesia, is warned to beware of such interruptions and taunts, and promptly demonstrates that she is thoroughly capable of replying in kind.<sup>6</sup> An idea of the vulgarity to which such chaffing might attain may be gained from the character of the witticisms indulged in by speakers in the

<sup>1</sup>Cf. Toepffer *Attische Genealogie* p. 148; Gilbert *Beiträge* p. 249.

<sup>2</sup>Dem. 19. 23.

<sup>3</sup>Dem. 19. 45-46 (Kennedy).

<sup>4</sup>Aristoph. *Ach.* 37-39.

<sup>5</sup>*Ib.* 65 ff.

<sup>6</sup>*Ib.* *Eccl.* 248 ff.

ecclesia even in the presence of the Areopagus, as described by Aeschines.<sup>1</sup> A number of passages in the orators allude apparently to interruptions and jeers of this kind.<sup>2</sup> But it is difficult in many cases to distinguish between interruptions of individuals and the confused applause or uproar for which the entire body of partisans was responsible.

It was the constant practice of the Athenians in their assemblies to manifest approval by tumultuous applause,<sup>3</sup> and their disapproval by an unrestrained uproar of jeering and abuse.<sup>4</sup> Not infrequently speakers were hooted down and compelled to leave the bema without being heard.<sup>5</sup> The crowds of partisans with which, as has been seen, assemblies were "packed" were expected to make themselves useful in this way. The group of *παράκλητοι* introduced into the ecclesia by Aeschines howled down Demosthenes when he attempted to voice his opposition to the movement against the Amphissians.<sup>6</sup> In the *Ecclesiazusae*, the female conspirators with whom Praxagora "packed" the meeting shouted down the speakers, and greeted the words of their own orator with loud applause, completely drowning the voices of the opposition.<sup>7</sup> Demonstrations of this kind, carefully planned in advance, must have contributed to the exaggerated estimates of the oligarchic strength in 411,<sup>8</sup> and to the fear which kept silent the democrats in the ecclesia when the Thirty were chosen.<sup>9</sup>

7. *Voting*.—That the bands of associates with which assemblies were "packed" voted as a unit and to their full strength, goes without saying. The manner in which this was accomplished is excellently illustrated by the assembly which chose the Thirty. The "ephors" had decided in advance what measures were to

<sup>1</sup>1. 81 ff.

<sup>2</sup>E. g. [Dem.] 10. 11; Dem. 8. 38; 25. 64; [Dem.] 26. 19; 59. 43. Cf. 10. 70: *λοιδορίας εἰ τις χωρὶς ἔρουτο, κτλ.*

<sup>3</sup>Plato *Rep.* 492B; Dem. 21. 14; Aristoph. *Knights* 651, 666; cf. *Eccl.* 431-33, 213, which suggest the form that applause might take.

<sup>4</sup>Dem. 25. 95; Aeschines 1. 34; Thuc. 8. 53. 2, 86. 2; Lys. 12. 73; Dem. 18. 143; 19. 15, 45, 113; [13. 3]; Xen. *Hell.* 1. 7. 12; Plato *Apol.* 32B; Aristoph. *Eccl.* 399; Diod. Sic. 13. 101. 6; Plato *Rep. loc. cit.*, etc.

<sup>5</sup>Dem. 18. 143; 19. 15, 45, 113.

<sup>6</sup>Dem. 18. 143.

<sup>7</sup>Aristoph. *Eccl.* 399 ff., 431 ff.

<sup>8</sup>Thuc. 8. 66. 3.

<sup>9</sup>Lys. 12. 75.

be passed, and the clubmen had been instructed how to vote, probably by the "phylarchs," the lieutenants of the "ephors," before coming into the assembly; when the questions were put they promptly voted as they had been told.<sup>1</sup> In many cases, the voting strength of the associates must have been sufficient to turn the scale. In others, as upon the occasion just mentioned, the impression of overwhelming strength created by their pre-arranged demonstrations caused many of the opponents to refrain from voting or even to leave the assembly.<sup>2</sup> In addition, there were tricks which might be resorted to in order to make votes carry more than their due weight. One way of procuring this result was to watch for an opportunity when the members of the opposition were off their guard, or not present in their full strength, and then to rush a measure through. Thus Eubulides, by reason of his official position, was able to take up the greater part of the deme meeting with speeches and motions, and in this way to defer the vote on the case of his enemy Euxitheus until the majority of the demesmen had left and increasing darkness favored the execution of his plan.<sup>3</sup> Essentially this same device is employed by Praxagora in the *Ecclesiastuzsae*, for she fills the ecclesia with the women conspirators early in the morning, the assembly is convened betimes, most of the regular ecclesiasts are barred out, and the revolutionary measure is rushed through without delay.<sup>4</sup> Demosthenes apparently has in mind this proceeding when he alludes to the election of Aeschines as Pylaeian deputy in 340/39.<sup>5</sup> In the case of Eubulides, this manoeuvre was supplemented by actual fraud in the voting. In the darkness, Eubulides gave each of his confederates two or three ballots, which they cast into the boxes, so that more than sixty votes were cast, although not more than thirty persons were present.<sup>6</sup> Aeschines charges that proedri, fraudulently seated through the intrigues of a clique, not only announce the results of the

<sup>1</sup>Lys. 12. 44, 75-76.

<sup>2</sup>Lys. 12. 75; cf. Thuc. 6. 24. 4.

<sup>3</sup>Dem. 57. 8-10.

<sup>4</sup>376 ff.

<sup>5</sup>Dem. 18. 149; cf. *infra* pp. 129-30.

<sup>6</sup>Dem. 57. 13.



voting falsely, but intimidate their honest colleagues and prevent them from doing their duty.<sup>1</sup>

8. *Collusion of officials*.—In many cases, collusion on the part of officials must have been absolutely essential to the perpetration of these frauds; at all times it would be a great advantage. There was always the chance that a club member might be duly and properly chosen among the officials and thus placed in a position to favor his comrades, as in the case of Eubulides.<sup>2</sup> In addition to this chance, there was the possibility of fraudulently seating an associate, or, failing that, of winning over an official or officials who had been honestly chosen. The opportunities for such practices seem to have been considerable. There are a number of allusions to trickery in the selection of officials, and Aeschines alleges that the clique which controlled the senate and ecclesia in his time was accustomed to manipulate the lot and thus secure the election of its own members and partisans as presidents.<sup>3</sup> Officials who had been properly selected might be bribed, intimidated, or otherwise persuaded.<sup>4</sup> Andocides was charged with having bribed the prytanes to introduce him before the assembly,<sup>5</sup> and the Pseudo-Xenophon speaks of bribery of officials, both of the courts and of the deliberative bodies, as common in the fifth century.<sup>6</sup> Midias was successful in bribing even the archon who was to preside at the Dionysia, if we may believe Demosthenes.<sup>7</sup> In the Pseudo-Platonic *Axiochus*, Theramenes and his party are charged with having suborned the proedri when the generals were condemned.<sup>8</sup> Intimidation was also employed.<sup>9</sup> Threats of prosecution as a means of coercing officials have been discussed.<sup>10</sup> This connivance of the presiding officials made it possible to promote or

<sup>1</sup>3.3.

<sup>2</sup>Dem. 57. 8. Had there been any irregularity in the selection of Eubulides, Euxitheus would not have passed it by.

<sup>3</sup>Aeschines 3. 62, 73; [Dem.] 58. 29.

<sup>4</sup>Aeschines 3. 3.

<sup>5</sup>[Lys.] 6. 29.

<sup>6</sup>*Pol. Ath.* 3. 3; cf. Aristoph. *Thesm.* 936-37; *Peace* 908-09.

<sup>7</sup>Dem. 21. 17.

<sup>8</sup>368E.

<sup>9</sup>Aeschines 3. 3; cf. Dem. 25. 9.

<sup>10</sup>Cf. *supra* pp. 104-105.

hinder the introduction of business, to regulate debate and the putting of motions, and to perpetrate fraud in the voting.<sup>1</sup>

9. *Miscellaneous expedients.*—The efforts of associates to influence the action of assemblies must for the most part have been along the general lines indicated. There were, however, other opportunities open to them which do not come under these heads.

A clubman might, for example, employ the proceeding of Dicaeopolis in the *Acharnians*, and attempt to prevent the transaction of business to which he was opposed by announcing that he noted unfavorable omens, and by demanding an immediate adjournment.<sup>2</sup> As the pronouncement of the proper officials, probably the exegetes, was required, it would seem that a pretended *δίοσημία* would not suffice unless the support of those officials could be counted upon.<sup>3</sup>

Persons interested in a measure were sometimes introduced into assemblies in the hope that their appeals would stir the members.<sup>4</sup> Associates would be valuable aids in seeking out such persons and persuading them to appear, or even in procuring pseudo-suppliants for the occasion.<sup>5</sup>

#### ELECTIONS

The importance of the part played by the clubs in elections at Athens is incontestable. Thucydides makes this phase of their political activities typical of the whole when he describes them as "clubs \* \* \* for the management of trials and elections."<sup>6</sup> Plato alludes to the "eagerness of the clubs for office,"<sup>7</sup> and in the *Laws* stigmatizes as "the greatest enemy of all to the whole state" the citizen who, "by introducing a man into office, enslaves the laws and brings the state under the domination of clubs."<sup>8</sup>

<sup>1</sup>[Xen.] *Pol. Ath.* 3. 3; [Plat.] *Axioch.* 368E; Dem. 57. 8 ff., 13; Aeschines 3. 3.

<sup>2</sup>Aristoph. *Ach.* 169 ff. The misuse of omens and auspices for political purposes was very common at Rome (see Botsford *The Roman Assemblies* [New York: 1909] pp. 111-18).

<sup>3</sup>See Gilbert *Cons. Ant.* p. 292.

<sup>4</sup>Xen. *Hell.* 1. 7. 8-11; Aeschines 2. 15; Dem. 19.81.

<sup>5</sup>Theramenes and his party were said to have introduced pseudo-suppliants (Xen. *Hell. loc. cit.*).

<sup>6</sup>Thuc. 8. 54. 4 (Jowett); cf. *supra* p. 97.

<sup>7</sup>*Theaet.* 173D.

<sup>8</sup>856B.

And Aristophanes, on the eve of the revolution which the clubs effected in 411, urges the people "first, just as if washing out the filth from wool, to scourge out the rascals headlong from the city and to pick out the 'burrs,' and to card out thoroughly these men who combine and who herd themselves together for the offices, and to pluck out the heads."<sup>1</sup> This is undoubtedly an allusion to the domination of elections by the clubs.<sup>2</sup> The patent fact that the clubs did act and act effectively in elections has been noted in almost every study of elections or of the clubs.<sup>3</sup> It is not the purpose of this chapter to reiterate a well-known fact, but an endeavor will be made to throw some light upon the hitherto neglected question of how clubs might aid their members to secure elective offices.<sup>4</sup>

Baron and Gilbert, the latter with especial reference to the election of generals, have shown that preliminary "campaigning" and canvassing of the citizens by candidates for elective office took place and that associates were expected to render assistance.<sup>5</sup> In addition to the passages which they have discussed, may be noted the remark of Callias in Xenophon's *Symposium*, that his banquet will be more brilliant if it is adorned with such men as Socrates than it would be if the guests were generals and hipparchs and candidates for office.<sup>6</sup> This seems to indicate that it was customary to entertain candidates for office as guests of honor at dinners and banquets, and it is especially interesting

<sup>1</sup>*Lysistrata* 574 ff. with *scholia* (cf. *supra* p. 20). The play is generally assigned to the Lenaea of 411 (cf. Busolt III. p. 596; Croiset *Aristophanes* p. 131; Van Leeuwen *Proleg. ad Lys.* p. vi). This would place it at the end of January or beginning of February, just about the time Pisander was completing his organization of the clubs and preparing to leave Athens (Busolt III. p. 1471; Croiset p. 136).

<sup>2</sup>Croiset pp. 136-37; Gilbert *Beiträge* p. 85; Goetz pp. 548-49; Van Leeuwen (notes *ad loc.*) rightly takes τῶν κεφαλῶν as a reference to the leaders of the clubs.

<sup>3</sup>E. g. Baron "La candidature politique chez les Athéniens" *Rev. Et. Gr.* XIV. pp. 394 ff.; Gilbert *Beiträge* p. 15; Vischer pp. 171-2; Büttner pp. 77 ff.; Goodhart note to Thuc. 8. 48. 3; Arnold note to Thuc. 8. 54.4; Whibley p. 84, etc. None of these tells how the clubs influenced elections.

<sup>4</sup>The consideration will be limited to elections under the democracy. Under the aristocracy which preceded the reforms of Clisthenes, the clubs seem to have controlled elections by methods suited to the existing conditions (cf. *Cons. Ath.* 20. 1; *supra* pp. 11 ff.).

<sup>5</sup>Baron pp. 385 ff., esp. 394; Gilbert *Beiträge* pp. 14-16; on the terminology of candidacy, see Gilbert *op. cit.* p. 14. n. 1, and compare *supra* p. 75. n. 1.

<sup>6</sup>1. 4.

in connection with the part played by social gatherings in the political activities of the clubs.<sup>1</sup>

After the preliminary campaigning had been performed, the candidate was confronted by the real problem, the problem of getting out his vote in its full strength at the election and of taking advantage of any weakness his opponents might show. How his associates would aid him in meeting this difficulty has not to my knowledge been satisfactorily explained. Now elective offices were filled at assemblies (*ἀρχαιροεσίαι*) in which the citizens voted by show of hands, and which varied in size from the entire demos to the membership of a tribe or deme, according to the offices which were to be filled.<sup>2</sup> It is obvious that the opportunities for influencing these elective assemblies would, with some exceptions,<sup>3</sup> be identical with those which existed in connection with other assemblies at which a vote was to be taken, and that the clubs would naturally have recourse to the methods which they found successful in getting a favorable vote upon legislation.<sup>4</sup> Before the election, caucuses would be held, plans agreed upon, and instructions imparted. The full voting strength which the club or clubs concerned could influence would be introduced into the elective assembly. Electors would be personally canvassed before and, in all probability, even during the voting. Applause and acclamation would play their part. The associates would vote solidly for their candidate. And finally it must be remembered that in many cases the clubs would not stop at legitimate means of carrying the day, but would be on the alert to take advantage of their opponents at every turn, to procure the collusion of officials, or to commit frauds in the voting.

In the second oligarchic revolution, we find that the political

<sup>1</sup>Cf. *supra* p. 113, esp. n. 7.

<sup>2</sup>On the election of generals and other important state officers, cf. Gilbert *Cons. Ant.* p. 217. n. 3; Schoemann *Griechische Altertümer* pp. 418 ff.; on the tribal elections, cf. Gilbert *op. cit.* p. 215. n. 1. In addition to the deme offices, some of which were elective and some allotted (Haus-soullier pp. 57 ff.), the demes originally nominated candidates from whose number many offices were filled by lot, but this privilege was taken away from them to a large extent because of bribery in the deme elections (cf. Sandys's note to *Ar. Cons. Ath.* 62. 1). See also D. & S. *Dict. Ant.*, s. v. *archaeresia*.

<sup>3</sup>Headlam (p. 25) has called attention to the fact that there is no evidence that speeches were delivered in elections.

<sup>4</sup>Cf. *supra* pp. 111 ff.



machine organized by the clubs was employed not only to control legislation, but also to secure the election of the club candidates for office. The five "ephors" decide what men are to hold office, and give the necessary instructions for their election to the associates.<sup>1</sup> The reference is to a time which antedated the actual establishment of the oligarchy and to manipulation of the existing democratic organs of governmental administration.<sup>2</sup>

Demosthenes, in speaking of the election of Midias as epimelete at the Dionysia in 352/1,<sup>3</sup> intimates that pressure was brought to bear in connection with his candidacy. Two different texts have been constituted by editors here.<sup>4</sup> According to one reading, Midias is spoken of as "proposing himself and bidding the people elect him epimelete," according to the other, as "proposing and electing himself epimelete." Both phrases carry a suggestion of the exercise of undue influence, but we are not told how the election was managed. The fact that Midias was notorious for his club affiliations makes it probable that he was aided by his associates.<sup>5</sup>

Another case seems to throw light on the question. Demosthenes says of the election of Aeschines as pylagorus in 340/39: "No one (I believe) was aware of the thing or attending to it—just as these things are usually done at Athens—Aeschines was proposed for Pylaeon deputy, three or four held up their hands for him, and his election was declared."<sup>6</sup> The expression "three or four" is of course rhetorical exaggeration, but what Demosthenes is describing is exactly the proceeding which we have already seen used by the clubs in the voting of legislative assem-

<sup>1</sup>Lys. 12. 43-44: *καὶ οὐστίνας χρῆν ἄρχειν παρήγγελλον (ἐφοροί)*. For the workings of this organization in legislative assemblies, cf. *supra* pp. 112 ff.

<sup>2</sup>Lys. *loc. cit.*: *δημοκρατίας ἔτι οὐσης*. After the actual establishment of the Thirty, the election of officials was placed under the direct control of the oligarchs (Ar. *Cons. Ath.* 35; Xen. *Hell.* 2. 3. 11), as had previously been done by the Four Hundred, in both the proposed and the temporary constitution (Ar. *Cons. Ath.* 30. 2; 31. 1).

<sup>3</sup>In the time of Aristotle, the epimeletes were chosen by lot from the tribes; at an earlier time they were elected by the demos (Ar. *Cons. Ath.* 56. 4). Sandys (note *ad loc.*) places the election referred to in the year mentioned, just prior to the change.

<sup>4</sup>Dem. 21. 15. Goodwin reads *προβαλλόμενος καὶ κελεύων ἑαυτὸν εἰς Δ. χειροτονεῖν ἐπιμελετήν*; Blass prefers *προβαλλόμενος καὶ χειροτονῶν ἑαυτὸν, κτλ.*

<sup>5</sup>Cf. *supra* p. 23. n. 2.

<sup>6</sup>Dem. 18. 149 (Kennedy).

blies.<sup>1</sup> The party of Aeschines seized an opportunity when their opponents were not on the alert and elected their candidates. Now one of those elected at the same time was Midias,<sup>2</sup> who belonged to the party of Aeschines, and it is reasonable to believe that in the faction which rushed the election through were the clubs to which Midias belonged.

It is worthy of note that Ebulides, at the time that his club was able to control a deme meeting of the Halimusians, was a member of the boule.<sup>3</sup> This presupposes that he was first elected by the deme as one of several candidates from whose number the councillors from the deme were chosen by lot.<sup>4</sup> Since he and his club were able to influence the action of the meeting at which the name of Euxitheus was stricken from the deme roll, it is not unlikely that they were also able to control that year's election meeting of the deme and to insure the success of their candidates. If this was the case, Ebulides was among the candidates whom they elected and was also successful in the drawing. Probably his club, if its strength had proved insufficient on that occasion to carry the day by fair means, would not have hesitated to resort to some such trick as proved successful in the voting on Euxitheus. If clubs were actually able to control the elections of the demes in the way that this case suggests, it can be easily seen that when they combined on any policy it would be possible for them to secure the selection of many of the associates as councillors from their respective demes, and this may be the explanation of the fact that on the eve of the revolution of 404 the boule contained a large percentage of oligarchic sympathizers.<sup>5</sup> This seems also to answer the query of Headlam<sup>6</sup> as to how prominent politicians contrived to secure seats in the boule. A club could not of course keep the same

<sup>1</sup>Cf. *supra* pp. 123 ff., and Aristoph. *Ach.* 598, where the same proceeding in the election of generals is referred to. In the case of this special election, the date may have been advanced or due notice not given; in the regular archaeresiae, some such manoeuvre as those described on pp. 116, 124 might be resorted to.

<sup>2</sup>Aeschines 3. 115.

<sup>3</sup>Dem. 57. 8; cf. *supra* pp. 23. n. 3; pp. 84, 124.

<sup>4</sup>Ar. *Cons. Ath.* 62. 1; cf. Gilbert *Cons. Ant.* pp. 265 ff.; Headlam pp. 187 ff.

<sup>5</sup>Lys. 13. 20.

<sup>6</sup>Pp. 53 ff.

man continuously in office,<sup>1</sup> nor could it be certain of getting a particular man into the boule in a particular year.<sup>2</sup> But the political leader who was a member of a club strong enough to control his deme could be reasonably certain (1) that the councillors from his deme would be acceptable to him and to his party, and (2) that he himself would be elected for the two terms that the law allowed.

Haussoullier has shown<sup>3</sup> that the majority of the deme officials, according to the inscriptional evidence that has been preserved, belonged to a comparatively small number of rich and influential families which dominated the political life of their respective demes. We have seen that it was largely from this class that the clubs, particularly those of aristocratic tendencies, recruited their membership.<sup>4</sup> This would indicate that the case in hand, one of the very few upon which a knowledge of deme administration can be based, is the sole remaining example of a large class of instances which would exhibit these powerful families controlling their demes by means of the clubs. Eubulides and his father Antiphilus belonged to one of these wealthy houses,<sup>5</sup> both were members of a club at times when that club was able to dominate the deme,<sup>6</sup> and both were demarchs at those times.<sup>7</sup> If the view of Sandys<sup>8</sup> that the demarch was elected in all demes but that of the Piraeus is correct, we have here a striking testimonial to the potency of the clubs in deme elections.

Bribery of electors seems to have been not uncommon at Athens, and to have been practiced by candidates for elective offices of every degree of importance, a state of affairs which might be in-

<sup>1</sup>On account of the rule that no citizen should be a councillor more than twice or on two successive years (*Ar. Cons. Ath.* 62. 3).

<sup>2</sup>Since half of the men elected would be drawn (cf. Headlam p. 188), I do not see how Headlam can say (p. 187) "as the final decision between the candidates was by lot, the elections could not have any party importance." According to his own theory half of the successful candidates for election would be drawn as councillors and the remainder would serve as alternates.

<sup>3</sup>Pp. 59 ff.

<sup>4</sup>Cf. *supra* pp. 23-24.

<sup>5</sup>Haussoullier pp. 42, 62.

<sup>6</sup>Cf. *supra* p. 23. n. 3; *Dem.* 57. 60.

<sup>7</sup>*Dem.* 57. 8, 26, 60; cf. Haussoullier pp. 41 ff.

<sup>8</sup>Note to *Ar. Cons. Ath.* 54. 8. Müller (*De demis Atticis* [Nordhausen: 1880] pp. 49 ff.) believes that the demarch was chosen by lot.

ferred from the successful bribery of the courts and the ecclesia even if we had no specific accounts of this sort of corruption in elections. But Isocrates draws an alarming picture of the conditions which prevailed about the middle of the fourth century.<sup>1</sup> "Although the punishment of death," says the orator, "is provided for the man who is convicted of bribery, those who do this the most openly we elect generals, and the one who can corrupt the greatest number of citizens we place in charge of our most important interests." While the statement undoubtedly contains an element of rhetorical exaggeration, it shows that bribery of electors was practiced by candidates for the important office of general.<sup>2</sup> And ten years later Aeschines alleges that "there is no office which Timarchus has not held, not having been fairly allotted or elected to any, but having purchased all, contrary to the laws."<sup>3</sup> He mentions two specific offices, logist and governor in Andros, and alleges that Timarchus secured the latter by paying thirty minae.<sup>4</sup> To these instances may be added the dispassionate and unbiased statement of Aristotle that the offices which in his time were allotted in the Theseum were formerly filled from candidates elected by the demes, but that the demes sold them, and consequently the right of electing the candidates was transferred to the tribes, except in the case of councillors and *φρουροί*.<sup>5</sup> Thus it is seen that bribery was

<sup>1</sup>Isoc. 8. 50.

<sup>2</sup>Baron, who endeavors to prove (pp. 372 ff.) that bribery of electors by candidates for the more important offices was almost unknown, wishes to make this statement refer to the election of men who had previously been concerned in the corruption of dicasts. "S'il a voulu dire cela (corruption of electors) il s'est exprimé d' une façon peu naturelle. Avant de blâmer les électeurs d' élire des hommes qui les corrompent, il serait, ce semble, plus direct et plus logique de leur reprocher de se laisser corrompre eux-mêmes." In view of the known reluctance of speakers to antagonize the demos, this argument can have little weight, and to the reader who has not a thesis to be maintained, the passage can have but one meaning. Baron also fails to consider the fact that the electors and the dicasts were the same men. I would be inclined to agree that electoral corruption was "the exception," but there can be no doubt that it, like jury bribing, was possible and was practiced when other means of gaining the day proved inadequate.

<sup>3</sup>Aeschines 1. 106-7.

<sup>4</sup>*Ib. loc. cit.*

<sup>5</sup>*Cons. Ath.* 62. 1. Baron classes the office held by Timarchus in Andros with the deme offices, and believes that positions of this class could be purchased. His statement (pp. 376-77) apropos of corruption in the demes, that "il est probable que la vente des fonctions y était un expédient



a means of influencing elections for offices of all grades of importance, a means which could be made use of by the clubs when the voting strength at their command proved insufficient. Contributions of money made by members could be used, and the members could give their services as agents.

Powerful as was the influence of the clubs in elections, it would seem at first glance to have been absolutely ineffective in the case of a large class of offices, those which were filled by lot. But it must be remembered that in the case of many of these offices the allotment was made from candidates who had been chosen beforehand at elections of the demes or tribes.<sup>1</sup> At these elections the clubs would be able to bring influence to bear in the same way as at the archaeresiae for the purely elective offices. This has been seen in the case of members of the boule. Also in the case of offices which were filled by lot from candidates nominated beforehand there was opportunity for the exercise of influence by clubs or individuals, as appears from a case described by Lysias.<sup>2</sup> Again, there is reason to believe that at times the lot was improperly administered. The allegations of Aeschines<sup>3</sup> that Demosthenes owed his seat in the boule to trickery, and was not properly drawn either as councillor or as alternate, may or

commode et usité pour combler les vides de la caisse municipale," seems rather extreme.

<sup>1</sup>In the time of Aristotle, the members of the boule and the phrouri were chosen by lot from candidates elected by the demes (Ar. Cons. Ath. 62. 1; cf. Sandys's note *ad loc.*; Gilbert Cons. Ant. pp. 265, 266. n. 1; Schoemann p. 397; Headlam p. 187); the nine archons were selected by lot from candidates chosen, also by lot, from the tribes (Ar. Cons. Ath. 8. 1; cf. Gilbert Cons. Ant. p. 217; Sandys, note to Ar. Cons. Ath. 22. 5); in regard to other offices which were filled by lot at this time, we are not told for which the candidates were elected and for which drawn. At an earlier time, however, many offices besides those of councillors and phrouri were filled by lot from candidates elected by the demes (Ar. Cons. Ath. 62. 1), and for an indeterminate period commencing in 487/6 the candidates from whose number the nine archons were drawn were elected by the demes (Ar. Cons. Ath. 22. 5, with Sandys's note).

<sup>2</sup>4. 3 ff. The speaker, in the capacity of councillor, had nominated the plaintiff for judge at the Dionysia, with the understanding that the latter, if drawn, was to vote in favor of his tribe. Unfortunately for the success of the scheme, the plaintiff was not one of those drawn. See on this passage Jebb I. p. 275. n. 1; for a somewhat different view of the technical procedure, see Haigh *The Attic Theatre* (Oxford: 1907) pp. 31 ff., esp. p. 31. n. 5.

<sup>3</sup>73, 62: οὔτε λαχῶν οὔτ' ἐπιλαχῶν, ἀλλ' ἐκ παρασκευῆς πριάμενος. Baron has rightly pointed out in regard to Aeschines 1. 106 (p. 376) that these words should not be taken to mean that the usual forms were dispensed with, but merely to indicate improper procedure.

may not be true in the particular case; there is no evidence on which to test the statement. But it does indicate that fraudulent manipulation of the lot was a recognized fact. This is supported by other cases. According to the Pseudo-Demosthenes, the brother of Theocritus obtained the office of hieropoios by trickery, not being properly drawn for the office or as alternate.<sup>1</sup> And Aeschines alleges that Timarchus was able to secure many allotted offices by bribery, among them that of logist.<sup>2</sup> Richardson<sup>3</sup> concludes that tampering with the lot was "a common practice." Unfortunately, in none of these cases have we details of the methods followed. But it is obvious that the connivance of the officials entrusted with the supervision of the lot would be necessary. And a law cited by Demosthenes<sup>4</sup> providing the death penalty for the man whose name appears on more than one ticket, indicates that a means of fraud in drawing was to "stuff" the box with a number of tickets bearing the name of the favored candidate, thus increasing his chances of success. One method seems to have been actually to open the urns from which names were to be drawn, remove the slips which had been deposited therein, and substitute others. Isocrates describes such a proceeding in the selection of judges for a dramatic or dithyrambic contest: "For who of you does not know that Pythodorus—the 'tenter' they call him—who does and says everything at the behest of Pasion, just last year opened the urns and took out the names of the judges, which had been put in by the council? And yet, a man who for a pittance, although the deed involved a capital charge, dared to open those urns, which had been sealed by the prytanes and counter-sealed by the choregi, which were being guarded by the treasurers and lay in the acro-

<sup>1</sup>[Dem.] 58. 29. For the selection of the two colleges of hieropoi, cf. *Ar. Cons. Ath.* 54. 6-7, with Sandys's note; Gilbert *Cons. Ant.* p. 262.

<sup>2</sup>Aeschines 1. 106-107. For the two colleges of logists, cf. *Ar. Cons. Ath.* 48. 3 and 54.1-2; Gilbert *Cons. Ant.* pp. 223-25. Timarchus was apparently a member of the last named commission.

<sup>3</sup>Note to Aeschines 3. 3. While Headlam (p. 54) will not admit that the lot was fraudulently administered, he makes no attempt to dispose of the cases cited, save to remark of the charge against Demosthenes that "it is probably nothing but a characteristic method of expressing annoyance that Demosthenes had been fortunate enough to get elected."

<sup>4</sup>Dem. 39. 12. The correct interpretation of this passage is found in Sandys's note *ad loc.*, and in D. & S. *Dict. Ant.*, s. v. *archai* (I. p. 369).

polis, why do we wonder," etc.<sup>1</sup> It will be noted that bribery is mentioned in connection with several of these fraudulent drawings. This would presumably be bribery of the officials in charge. The possibility of manipulating the lot was then another means of influencing the selection of officers which was open to the clubs, and of which some of them at least would not have hesitated to take advantage, either when associates were in charge of the drawing, or when officials could be won over.<sup>2</sup>

Demosthenes alludes to a case in which a politician secured the removal by special decree of an allotted officer, alleging malfeasance, and got himself appointed in his stead.<sup>3</sup>

It is easy to see from all this what a valuable asset was the support of a club to the man who was a candidate for office in his own deme, or for membership in the boule, and how the oligarchic and conservative clubs were able by combining their strength to influence elections for the more important offices, and at times, by taking advantage of a change in public sentiment, even to control the whole machinery of government and overthrow the democracy. Indeed, Baron concludes that the success of a candidate for elective office was conditional upon his securing the support of the popular leaders on the one side, or of the clubs on the other.<sup>4</sup> When the democratic party was in power, he believes, the leading demagogue dictated the election of officials, when the oligarchs were in control, the clubs. Baron, however, is inclined to ascribe to the clubs entirely too much the aspect of a permanent, organized party of the opposition, and to forget here a fact which he elsewhere<sup>5</sup> recognizes briefly, that, while many of them were oligarchic in their political tendencies, they followed diverse interests and organized only on exceptional occasions, as is implied in the Thucydides passage.<sup>6</sup> He thus loses sight of their influence upon elections for the great mass of less important offices.

<sup>1</sup>Isoc. 17. 33-34; cf. Haigh *op. cit.* p. 31. n. 5.

<sup>2</sup>For the way in which clubs took advantage of the collusion of officials, cf. *supra* pp. 90 ff., 125 ff.

<sup>3</sup>Dem. 22. 48 (with Wayte's note); 24. 160.

<sup>4</sup>Pp. 390 ff., esp. 396.

<sup>5</sup>P. 394. Baron appears to forget this statement as he progresses in his argument.

<sup>6</sup>8. 54. 4.

Again, while Baron is undoubtedly correct in believing that Pericles and to a certain extent the later demagogues dictated the choice of officials, he speaks as if the pronouncement of the popular leader *ipso facto* resulted in the election of the favored man. He forgets the great mass of detailed and arduous work which lay between the endorsement of the candidate and his election. He fails to consider the problem which the democratic leaders as well as the clubs had to meet, that of getting out the vote which they could control. We have seen that the early demagogues, Pericles, Themistocles, Clisthenes, had hetaerics with which they could meet this problem,<sup>1</sup> and we must believe that their successors were aided by some organizations which were, if not clubs, similar in aim and methods.

#### OSTRACISM

In theory, ostracism may be regarded as the means by which a far-seeing statesman attempted to guard against the establishment of a tyranny, or to protect the state from the disastrous consequences of bitter factionalism.<sup>2</sup> From the standpoint of practical politics, it is seen to have become an offensive weapon of great efficiency for the party leader whose strength and popular influence sufficed to wield it with impunity.<sup>3</sup> The particular cases in which details are available indicate that the voting was largely partisan in character and that the battle was fought out along much the same lines and by much the same methods as at elections and in the assembly.<sup>4</sup> Ostracism, then, offered the clubs another field for political activity.

In a number of the cases of ostracism mentioned by ancient writers, details are so completely lacking that we cannot say

<sup>1</sup>Cf. *supra* p. 18, notes 4-6.

<sup>2</sup>Cf. Carcopino "Histoire de l'ostracisme athénien" *Mélanges d'histoire ancienne* (Paris: 1909) pp. 212-20; Martin, in *D. & S. Dict. Ant.*, s. v. (IV. pp. 261-2); Grote II. p. 512, III. pp. 373 ff.; Valetou "De ostracismo" *Mnemosyne N. S.* XV. pp. 129-71, 337-55, 357-426; XVI. pp. 1-25, 162-238.

<sup>3</sup>Cf. *Ar. Pol.* 1284 b 22: *στασιαστικῶς ἐχρῶντο τοῖς ὀστρακισμοῖς.*

<sup>4</sup>In the ostracism of Aristides (Grote IV. pp. 149 ff.; Busolt II. pp. 651-52), of Cimon (Grote IV. pp. 450-51; Busolt III. pp. 294-95), of Thucydides (Grote IV. p. 505; Busolt III. pp. 495 ff.) of Hyperbolus (cf. *infra* pp. 137-38), the vote was cast along partisan lines and the parties must have spared no effort to get out their full strength.



positively whether or not clubs participated. But it is inconceivable that the clubs of Clisthenes and Hipparchus remained passive when the latter was ostracised;<sup>1</sup> that the associates of Themistocles withheld their assistance in the banishment of Aristides, or offered no opposition when Themistocles was himself ostracised;<sup>2</sup> that the club of Cimon supinely acquiesced in his overthrow;<sup>3</sup> that the hetaeries of Pericles and Thucydides stood idle when a vote of ostracism in 444 brought the opposition between the two leaders to a crisis and resulted in the breaking up of Thucydides' club.<sup>4</sup> In the ostracism of Hyperbolus, almost the only instance in which details are available, the intervention of the clubs of Alcibiades and Nicias, as described by Plutarch, was so effective that the vote was turned against the popular leader himself.<sup>5</sup> Carcopino concludes that it was this *coup* on the part of the clubs which revealed to the Athenians the dangerous possibilities of ostracism and caused its abandonment.<sup>6</sup>

In 418/17,<sup>7</sup> the opposition between Nicias and Alcibiades had come to a focus. An ostracism was decided upon. Hyperbolus gave it his strong support, probably in the hope of getting rid of his rival Alcibiades.<sup>8</sup> The latter, according to Plutarch, perceived his danger, "effected a union of the parties, and, having reached an agreement with Nicias, turned the vote of ostracism against Hyperbolus. But, as some say, it was not Nicias but Phaeax with whom he came to terms, and it was the latter's hetaery whose support he received in driving out Hyperbolus."<sup>9</sup> Phaeax seems to have been the head of an oligarchic group<sup>10</sup>

<sup>1</sup>Hipparchus was supported by and probably belonged to clubs of the Isagorean faction (*Ar. Cons. Ath.* 22. 4, 20. 1). On these and the clubs of the Clisthenic party, see *supra* pp. 11 ff.

<sup>2</sup>Cf. *supra* p. 18. n. 4.

<sup>3</sup>Cf. *supra* p. 19. n. 1; for the fidelity of Cimon's associates after his banishment, cf. *Plut. Cim.* 17.

<sup>4</sup>On the club of Pericles, cf. *supra* p. 18. n. 5; on that of Thucydides, *supra* p. 19. n. 2, where a distinction is noted between the club of Thucydides and the larger party organization described by Plutarch (*Per.* 11).

<sup>5</sup>Cf. *infra* p. 138 n. 1.

<sup>6</sup>Pp. 140, 254-56.

<sup>7</sup>On the chronology, cf. Carcopino pp. 221-24; Busolt III. p. 1257. n. 1.

<sup>8</sup>*Plut. Nic.* 11; cf. Busolt III. pp. 1256-57.

<sup>9</sup>*Plut. Alc.* 13; cf. *Nic.* 11; *Arist.* 7.

<sup>10</sup>Cf. Busolt III. pp. 1258-59; Carcopino (pp. 246-51) makes Phaeax a fol-

which was acting with the moderates at the time. With Alcibiades, Nicias, and Phaeax against him, Hyperbolus faced a combination which must have included nearly all of the clubs in Athens, one which he could not hope to overcome.<sup>1</sup>

How much greater was the activity of the clubs in ostracism than can be realized from these isolated instances, is shown by the statement of the Pseudo-Andocides, writing probably in the early fourth century: "In such proceedings (as ostracism) the men who possess associates and club-fellows have an advantage over those who do not; for the decision does not rest with judges chosen by lot, as in the courts, but in this all the Athenians take part."<sup>2</sup>

While Carcopino appreciates the importance of the clubs in ostracism, a detailed study of the methods they employ does not fall within the scope of his investigation.<sup>3</sup> Here again the question to be answered is, how did a club seek to influence a vote of ostracism? By what precise means did the associates of a party leader and of his lieutenants second his efforts to procure the ostracism of an opponent or to avert a vote against himself?

Every year, in the *ἐκκλησία κυρία* of the sixth prytany, the question "shall there be a vote of ostracism this year?" came before the assembly in the regular order of business and was voted upon by show of hands. It is evident that the clubs would support or oppose this measure in much the same way that they supported or opposed other propositions which were voted on in the

lower of Nicias. In either case, he was no doubt, as Plutarch asserts, the leader of a club, and may well have played the part assigned to him.

<sup>1</sup>On the clubs of Alcibiades and Nicias, cf. *supra* p. 18. n. 6 and p. 19. n. 3. It is important not to confuse the clubs with the parties which they made up. Grote expresses the correct relation when he speaks of "the two opposing parties, each doubtless including various clubs or hetaerics" (V. p. 505).

<sup>2</sup>[And.] 4. 4. While it is now generally admitted that this speech did not form a part of the debate in the ostracism of 417, its antiquity can hardly be doubted. Blass (I. pp. 337-38) and Christ (*Gesch. d. griech. Lit.* p. 383) ascribe it to a sophist of the fourth century, and Carcopino (pp. 240-43) adduces excellent grounds for placing it early in the fourth century. It is then, as Carcopino justly observes (pp. 243 ff.), not to be lightly discarded, but is entitled to serious and careful consideration.

<sup>3</sup>Cf. *supra* p. 137. n. 6. Carcopino does touch upon one kind of club activity in ostracism, and a very important one, the circulation of slanders and prejudiced reports (pp. 139-40, 256).

assembly.<sup>1</sup> Before the day of the ecclesia, caucuses would be held, plans agreed upon, speakers selected, and instructions given. The ecclesiasts would be personally canvassed up to the last moment. The full voting strength of the clubs interested would be introduced into the assembly; the chosen speakers would make their arguments;<sup>2</sup> the rank and file of the associates would make demonstrations of approval or disapproval, and would vote as they had been previously instructed. In this as in other assemblies there might be an opportunity to procure the collusion of officials.<sup>3</sup>

If the vote was against an ostracism, the work of a club, whether it had favored or opposed the measure, was over, for the question could not be brought up again for a year. But if the assembly decided to hold an ostracism, the greater part remained still to do. The interval between the preliminary vote and the ostracophory, which varied in all probability from a fortnight to six weeks,<sup>4</sup> must have been devoted to assiduous canvassing of the citizens. Associates who were promoting the ostracism would endeavor to get out as large a vote as possible against the opponent. Those who were trying to defend a comrade from ostracism would dissuade citizens from voting, in order that the necessary number of votes might not be registered and the ostracism might be null and void.<sup>5</sup> If they were confident in the strength of their party, they might endeavor to poll a heavy vote and banish the opponent, as was done in the case of Hyperbolus. This interval, in which every means of influencing citizens

<sup>1</sup>For the ways in which clubs influenced assemblies, cf. *supra* pp. 111 ff.

<sup>2</sup>I am inclined to believe, with Martin (*Notes sur l'ostracisme dans Athènes* pp. 35 ff.) and Lugebil ("Ueber das Wesen und die historische Bedeutung des Ostrakismos in Athen" *Jahrb. f. kl. Phil., Supplbd.* IV. p. 138), that debate was allowed at the preliminary voting. Carcopino takes the opposite position (pp. 129 ff.), but I do not feel that he has shown conclusively that ἐπιχειροτονία in the Aristotle passage (*Cons. Ath.* 43. 5) means anything more than a vote by show of hands as opposed to a vote by ballots. See also Lipsius "Procheirotomie und Epicheirotomie" *Leipzig. Studien* XVII. (1896) pp. 409 ff.

<sup>3</sup>Cf. *supra* pp. 125 ff.

<sup>4</sup>Carcopino p. 139.

<sup>5</sup>Scholars are divided as to whether the requirement for an ostracism to be valid was a total vote of six thousand or that number of votes against one man. Cf. Carcopino pp. 150 ff., and the views which he cites in p. 150. n. 4.

would be employed, gave the clubs an opportunity of utilizing the tactics upon which their peculiar efficiency depended; men would be approached by associates with persuasion, offers of bribes, threats, and coercion of every kind.<sup>1</sup> And finally the clubs would disseminate all kinds of slanders and prejudiced reports throughout the city.<sup>2</sup> With this in mind, it is not hard to understand why the Pseudo-Andocides considered the possession of associates such a tremendous advantage in a contest of ostracism.

The ostracism of Damon, the adherent of Pericles, would indicate that ostracism, like the political prosecutions,<sup>3</sup> might occasionally be directed against the friends and lieutenants of a party leader in the hope of annoying him or as a test of strength.<sup>4</sup>

There must have been cases in which an ostracism was sought in which the proposition failed to pass the preliminary assembly, and others in which the requisite number of votes was not registered. At all times the threat of ostracism must have been a potent means of pressure in politics.<sup>5</sup> It is easy to see that ostracism offered the clubs a field of far greater importance than would be indicated by the comparatively few cases in which it resulted in actual banishment.

#### FOREIGN INTERVENTION AND PRODOSIA

Thucydides begins his famous description of the political conditions which prevailed throughout Hellas at the time of the Peloponnesian war with these words: "The whole Hellenic world was in commotion; in every city the chiefs of the democracy and of the oligarchy were struggling, the one to bring in the

<sup>1</sup>Compare the canvassing of citizens by associates before assemblies (*supra* pp. 117-18), and the use of coercion in litigation (*supra* pp. 61, 82, 83-85, 89-90, 91-92).

<sup>2</sup>Compare the circulation of political pamphlets (*supra* pp. 114-15) and of slanders in litigation (*supra* pp. 56 ff.), and see Carcopino pp. 139-40, 256.

<sup>3</sup>Cf. *supra* pp. 103-104.

<sup>4</sup>Cf. Martin *Notes* pp. 18-32; Busolt III. p. 515; Beloch *Gr. Gesch.* I. p. 515. Carcopino (pp. 174 ff.; *Rev. Et. Gr.* XVIII. (1905) pp. 415-29) contends that the ostracism of Damon did not take place. It seems dangerous to base a denial on the ground of mere inability to fix a date to which we can ascribe it, especially when that inability results from the dramatic setting of a Platonic dialogue.

<sup>5</sup>Pericles greatly feared ostracism (Plut. *Per.* 7).



Athenians, the other the Lacedaemonians. Now in time of peace, men would have had no excuse for introducing either, and no desire to do so, but when they were at war and both sides could easily obtain allies to the hurt of their enemies and the advantage of themselves, the dissatisfied party was only too ready to invoke foreign aid."<sup>1</sup> The war was, as Thucydides observes, the occasion for this epidemic, but the real cause was that deep-seated Greek feeling to which Brasidas in his speech to the Acanthians gives striking expression, when he says that subjection to compatriots is "less endurable than the dominion of a foreigner."<sup>2</sup> To the Greek, to be ruled by his political opponents was an intolerable humiliation, to be averted at any cost, even if it became necessary to deliver his state into the hands of its foemen. The beginnings of this practice of introducing foreign forces are to be traced far back into legendary times,<sup>3</sup> and examples are numerous in every period of Greek history.<sup>4</sup> In nearly every instance in which an attack upon a city is described, there is some allusion to a party within the walls who are making preparations to betray the city into the hands of the enemy, and numbers of captures testify to the success of such plots.<sup>5</sup>

Athens was no exception to this general rule. In spite of stringent laws against *prodosia*,<sup>6</sup> attempts were repeatedly made to overthrow the government by means of foreign aid, or to betray the city to an enemy, and during the period of the great struggles between democracy and oligarchy, certain of the oligarchic clubs

<sup>1</sup>Thuc. 3. 82. 1. (Jowett.)

<sup>2</sup>Thuc. 4. 86. 5.

<sup>3</sup>Hellen and his sons, having become powerful in Phthiotis, were "invited" to different cities. (Thuc. 1. 3. 2, with Arnold's note.)

<sup>4</sup>E. g., the invitation to the Athenians from the democrats of the Boeotian cities, described by Thucydides (4. 76). Cf. also Thuc. 4. 110. 1; 3. 62. 4; 5. 4. 3; 1. 115. 2; 2. 2. 2. (cf. 3. 65. 2); 5. 33. 1; 5. 5. 1. It was not unusual for political exiles to seek and receive foreign aid: e. g., Thuc. 1. 111. 1; 2. 33. 1; Xen. *Hell.* 1. 1. 31.

<sup>5</sup>E. g., Hdt. 6. 100; Thuc. 4. 7, 49, 76. 3, 103. 2-3; 2. 2. 2; 3. 18. 1; 5. 62. 2, 116. 3; 7. 48. 2 (cf. 73. 3); 8. 60. 1; Dem. 1. 5; [59. 99]; Diod. Sic. 13. 76. 5; etc. The terminology is interesting. To invite foreign intervention is *ἐπάγειν*, *ἐπάγεσθαι*, *ἐπαγωγή*; to restore an exile is *κατάγειν*. The betrayal of a city is *προδοσία*, and the traitors are said *προδιδόναι*, *παραδιδόναι*, *ἐνδιδόναι*; other words occasionally appear in this sense.

<sup>6</sup>M.S.L. pp. 419 ff.; D. & S. *Dict. Ant.*, s. v. *proditio*.

which made up the party of the opposition did not shrink from attempting treason of this kind as a last resort.

The first authentic instance of the introduction into Athens of foreign allies in an attempt to overthrow the government is also the earliest appearance of a hetaery in the political field. About 632, Cylon and the members of his club, when they seized the acropolis with the intention of establishing a tyranny, were aided by a Megarian force, obtained from the tyrant Theagenes, the father-in-law of Cylon.<sup>1</sup> Nearly a century later, Pisistratus and his party made use of foreign money and arms, furnished principally by the Thebans and by Lygdamis, afterward tyrant of Naxos, in overcoming their opponents and effecting the second restoration.<sup>2</sup> The banished opponents of the Pisistratids, under the leadership of the Alcmeonids, failed repeatedly in their attempts to regain control of the state,<sup>3</sup> and it was only after they had secured the aid of Spartan arms and after two expeditions had been sent from Lacedaemon that they were able to procure the expulsion of Hippias and their own return from exile.<sup>4</sup> Hippias in turn sought the aid of Persia.<sup>5</sup> When the expedition under Datis landed at Marathon, Hippias was with him, and his adherents in Athens had made preparations to receive the Persians before the Athenian army could return from the field of battle.<sup>6</sup>

At the very outset of the long struggle between the oligarchs and the waxing democracy, the former sought foreign intervention. In 508/7, but four years after the expulsion of Hippias,

<sup>1</sup>Thuc. 1. 126. 5; cf. Busolt II. p. 206; *supra* pp. 13-14.

<sup>2</sup>Hdt. 1. 61; *Ar. Cons. Ath.* 15. 2; cf. Busolt II. p. 324; cf. *supra* p. 13 for the club of Pisistratus.

<sup>3</sup>*Ar. Cons. Ath.* 19. 3.

<sup>4</sup>Hdt. 5. 63-65; 6. 123; *Ar. Cons. Ath.* 19. 2 ff.; cf. Busolt II. pp. 386 ff.

<sup>5</sup>Hdt. 5. 96.

<sup>6</sup>Hdt. 6. 102, 115 ff., 121 ff.; cf. Grote IV. pp. 39 ff., 45 ff. Herodotus was unable to say who displayed the shield, although sure that it was not the Alcmaeonids. I am inclined to believe, with Grote, that the shield was actually shown (Hdt. 6. 124), and that the adherents of Hippias in Athens were responsible for the signal. While the flashing of the shield may have been an illusion or the story a fable (cf. Busolt II. p. 594. n. 1), there were at the time in Athens friends of the Pisistratids, some of whom would no doubt have been only too willing to purchase the restoration of Hippias at the price of Persian success. (*Ar. Cons. Ath.* 22. 4). In this faction were members of the clubs which had supported the Pisistratids (cf. *supra* pp. 12, 18).

the archon Isagoras and the reactionaries who had procured his election appealed to Sparta to drive out Clisthenes, the leader of the new democracy. The latter withdrew at the bidding of the Spartan king, Cleomenes, who then entered Athens with a small force and expelled seven hundred families indicated by Isagoras. But when he attempted to dissolve the boule and hand over the government to an oligarchy of three hundred, chosen no doubt from the members of the clubs which were supporting Isagoras, the demos rose in arms. The Spartan force was expelled, Isagoras fled, the leaders of the would-be oligarchy were executed, and Clisthenes and his party were recalled.<sup>1</sup> Isagoras' later attempt to establish himself as tyrant at Athens, with the aid of Spartan arms, was unsuccessful.<sup>2</sup>

According to Plutarch, on the eve of the battle of Plataea, certain Athenians formed a secret conspiracy to overthrow the democracy and were making preparations to betray the cause of Greece, when the plot was discovered by Aristides and quietly suppressed. The most prominent of the conspirators were Aeschines the Lamptrian and Agesias the Acharnian, and the cabal originated with men of families once rich and influential which had with the growth of democracy lost both wealth and power. Apparently they found many who were willing to enter into the plan, for the conspiracy had assumed formidable proportions when it was discovered.<sup>3</sup> It is impossible to determine conclusively what part if any the clubs played. The actual conspiracy was a temporary affair, organized for the prosecution of a specific undertaking, and cannot be called a hetaery. But it undoubtedly drew its membership from the oligarchs, and one of the oligarchic clubs may have been the nucleus, or it may have been a conspiracy of several clubs similar to those of later years.<sup>4</sup>

<sup>1</sup>Ar. *Cons. Ath.* 20; Hdt. 5. 70, 72-73; cf. Busolt II. pp. 401 ff.; Sandys's note to Ar. *Cons. Ath.* 21. 1; *supra* pp. 11 ff.; for the escape of Isagoras, cf. Hdt. 5. 74.

<sup>2</sup>Hdt. 5. 74 ff.

<sup>3</sup>Plut. *Arist.* 13. The source of this account is uncertain, nor can its correctness be completely established (cf. Busolt II. p. 729. n. 4). See Vischer pp. 161 ff.; Müller-Strübing pp. 237 ff.

<sup>4</sup>Vischer, who often fails to distinguish between the clubs proper and temporary conspiracies, speaks of it (*loc. cit.*) as "eine wirkliche Verschwörung" (cf. *supra* p. 11).

Just before the battle of Tanagra, while the Spartan forces were hesitating in Boeotia, they were secretly "invited" by certain of the Athenian oligarchs to march upon Athens, in the hope that they would dissolve the democracy and put a stop to the construction of the Long Walls. The prompt action of the Athenian generals in marching out to meet them at Tanagra was partially due to suspicions that such a treasonable plot was in progress.<sup>1</sup> There can be no doubt that oligarchic clubs were responsible for the plot,<sup>2</sup> but it is impossible to say whether it was in the hands of but one club or whether it was an inter-club conspiracy. It is practically certain that the club of Cimon was not implicated.<sup>3</sup>

From this time until the revolution of 411, there seems to have been little opportunity for such plots to assume dangerous proportions. But there was ever present with the people a strong fear of such treason on the part of the clubs, and out of this the popular leaders made political capital.<sup>4</sup> That it was not altogether unfounded is indicated by the fact that in 431-30 it was deemed necessary to send Melesippus, the Spartan envoy, to the frontier under guard, in order to prevent anyone from holding communication with him.<sup>5</sup> This precaution, if it did not originate with Pericles, evidently had his approval, and was directed against the oligarchs.

In 411, although there seems to have been from the first some apprehension that the Four Hundred would conclude a peace with Sparta upon the basis of the oligarchic interest,<sup>6</sup> convincing

<sup>1</sup>Thuc. 1. 107. 4-6; cf. Vischer pp. 164-66.

<sup>2</sup>Cf. Busolt III. p. 314; cf. *supra* p. 19. n. 1. Vischer (*loc. cit.*) connects this plot with the murder of Ephialtes (cf. *supra* pp. 109 ff.).

<sup>3</sup>Plut. *Cimon* 17; *Per.* 10; cf. Busolt (*loc. cit.*); Vischer p. 165; Grote IV. pp. 415 ff.; *supra* p. 19. n. 1.

<sup>4</sup>The mutilation of the Hermae was at once taken to be the deed of an oligarchic conspiracy against the democracy (Thuc. 6. 27, 60. 1, 61. 1), a view which was encouraged by certain popular leaders for political purposes (Thuc. 6. 28. 2, 61. 1; And. 1. 36; cf. *supra* p. 8. n. 7). The way in which the demagogues played upon the popular apprehension is parodied by Aristophanes in the *Knights*, where Cleon accuses his opponents of belonging to oligarchic clubs which are conspiring to betray Athens and overthrow the Demos (475 ff.; cf. 862-3, 257, 452), and the sausage-seller replies in kind (465 ff., 852-57). The allusion in [Xen.] *Pol. Ath.* 2. 15 ff. is interesting in this connection.

<sup>5</sup>Thuc. 2. 12. 2.

<sup>6</sup>Cf. Alcibiades' caution to the ambassadors of the Four Hundred: μηδὲν ἐνδιδόναι τοῖς πολέμοις (Thuc. 8. 86. 7, 89. 1.)



evidence of treasonable intent in the first two embassies is lacking. But the third was of an entirely different character. The extreme oligarchs, after the failure of their attempt to treat with the army at Samos, saw themselves deserted by even their trusted adherents in Athens; destruction stared them in the face. Antiphon, Phrynichus and others of their leaders were despatched to Sparta with instructions to conclude a peace upon any terms which were at all endurable. In the meanwhile, the fortification of Eetionia was prosecuted with redoubled energy.<sup>1</sup> Theramenes and the disaffected oligarchs at once charged that these measures had but one object in view, the betrayal of Athens to Sparta in the attempt to bolster up the failing oligarchy, and that the fleet of Agesandridas, ostensibly on its way to Euboea, was in reality intended to co-operate with the extreme oligarchs and effect an entrance into Athens.<sup>2</sup> The words of Thucydides leave little doubt that this accusation, whatever its motive, was substantially true. "The charge was not a mere calumny, but had some foundation in the disposition of the ruling party. For what would have best pleased them would have been, retaining the oligarchy in any case, to have preserved the Athenian empire over the allies; failing this, to keep merely their ships and walls, and to be independent; if this too proved impracticable, at any rate they would not see democracy restored, and themselves fall the first victims, but would rather bring in the enemy and come to terms with them, not caring if thereby the city lost walls and ships and everything else, provided that they could save their own lives."<sup>3</sup> This reveals but too clearly the character of the third embassy, and justifies Grote in his conclusion that "Athens was saved from capture only by the slackness and stupidity of the Spartans."<sup>4</sup> It is noteworthy that the work of fortification at Eetionia was under the direct supervision of the

<sup>1</sup>Thuc. 8. 90. 1-2; Vit. X. Orat. *Antiphon* 22 ff.; cf. Busolt III. p. 1502.

<sup>2</sup>Thuc. 8. 90. 3, 91. 1-2, 92. 3; Xen. *Mem.* 2. 3. 46.

<sup>3</sup>Thuc. 8. 91. 3 (Jowett); cf. 94. 2. and [Dem.] 58. 67, where there is apparent confusion of the two revolutions. Cf. the threat implied in the statement of the oligarchs in Thuc. 8. 93. 2: *τίως δὲ . . . ἀνώσαι*

<sup>4</sup>VI. p. 292. On the whole subject of the treasonable plans which began with the sending of the third embassy, cf. Grote VI. pp. 290 ff.; Busolt III. pp. 1502 ff.; Gilbert *Beiträge* p. 320; Vischer p. 192; Büttner pp. 80 ff.

general Alexicles, a man especially involved with the oligarchic clubs.<sup>1</sup>

But the climax to this long succession of treasonable intrigues carried on by the oligarchic clubs with Sparta came after the surrender of the city in 404, when Lysander, at the head of the victorious Lacedaemonian forces, compelled the Athenian demos to ratify the program arranged by the clubs and to hand over the government of the city to the Thirty.<sup>2</sup> Critias and the oligarchs had not been long in power before they perceived that they must choose between two alternatives, if they were to maintain their position, either they must make concessions to the more moderate wing of the party and secure their support,<sup>3</sup> or they must seek a continuance of Spartan aid. As seven years before, they chose the second course. Two of their number were sent to Sparta and secured from Lysander a Spartan harmost, Callibius, and seven hundred hoplites, who were installed in the Acropolis.<sup>4</sup> When this force no longer availed against the growing opposition, both the Thirty and their successors the Ten once more appealed to Sparta for aid, representing the democrats as "rebels" against the power of Sparta.<sup>5</sup>

These instances<sup>6</sup> show how the clubs resorted to foreign intervention during the struggles of the old aristocratic factions, and how certain of them instinctively made use of this familiar weapon in their fight against the demos. They do not indicate that every aristocratic, or even every oligarchic club, was willing to employ such methods, but that there were always at Athens clubs which would not hesitate to betray the state in their own interests. These may, to a certain extent, have attempted to

<sup>1</sup>Thuc. 8. 92. 4.

<sup>2</sup>Lys. 12. 71-77; Ar. *Cons. Ath.* 34. 3; Diod. Sic. 14. 3. 5; Xen. *Hell.* 2. 23; 2. 3. 2.

<sup>3</sup>Xen. *Hell.* 2. 3. 17 ff. That the cataloguing of the "Three Thousand" was a mere pretence and did not involve a departure from the close oligarchy, is shown by Ar. *Cons. Ath.* 36.

<sup>4</sup>Xen. *Hell.* 2. 3. 13 ff.; Ar. *Cons. Ath.* 37. 2.

<sup>5</sup>Xen. *Hell.* 2. 4. 28; cf. Isoc. 7. 68.

<sup>6</sup>It has seemed advisable to limit the consideration of prodosia in the revolutionary period to the general development of treasonable relations between the oligarchic leaders and Sparta, and not to attempt a detailed study of every instance of alleged treason, such as the suspected treachery of the Athenian generals at Aegospotami.

justify their course by the view that the democracy was an usurpation, based on sheer physical superiority, of the power which traditionally belonged to the old aristocracy.





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## INDEX

Subjects mentioned in the table of contents are in general omitted from the index.

- advocates, their importance in litigation 86; their qualifications 86-87; freedom allowed them in pleading 87, 99; their tendency toward professionalism 87; at times virtual defendants 104.
- Aeschines, the orator, aided by Philip of Macedon 45, 81; his prosecution of Timarchus 52, 88; dissuades his accusers 60; prosecuted by Demosthenes 73-74, 86; canvassing of jurors in his behalf 74; his prosecution of Ctesiphon 86; aided by Eubulus and Phocion 86; his advocates 89; his partisans in the ecclesia 116; jeers at Demosthenes 122; elected Pylaeon deputy 124, 129-30.
- Aeschines, the Lamprian, his conspiracy 143.
- Agathodaemonistae 32-33.
- age, a factor in club organization 27-29.
- Agasias, the Acharnian, his conspiracy 143.
- Agoracritus in the *Knights* 60.
- Agoratus, the informer 83, 96.
- Agyrrhius, his attack upon Andocides 43-44.
- Alcibiades, his club 17<sup>4</sup>, 18, 25, 33<sup>5</sup>, 36, 37-38, 116, 117, 137-38; his condemnation 101, 103, 107; postponement of his trial 120; advocates Sicilian expedition 116, 117, 120, 121-22; procures ostracism of Hyperbolus 137.
- Alcibiades (son), prosecuted by Archedratides 93.
- Alcmeonids, their political activities 11-12, 25, 142.
- Alexander, of Oeum, his prosecution of Polyuctus 86.
- Ampelinus, prosecuted by the choragus 49-50.
- Anaxagoras, prosecuted by enemies of Pericles 104<sup>1</sup>.
- Andocides, his club 24, 30, 35, 37, 61, 95, 113-14; attempts to justify betrayal of his associates 39; attacked in the courts 43-44, 46, 95; his quarrel with Callias 53; prosecutes Archippus 58; his advocates 86; his debate with Euphiletus 113-14; his address *To the Associates* 8, 114; alleged to have bribed prytanes 125.
- Androcles, attacks Alcibiades 101<sup>4</sup>; assassinated 108.
- Antiphilus, father of Eubulides 28, 131.
- Antiphon, his pamphlet against Alcibiades 115; directs the first oligarchic revolution 119; oligarchic envoy to Sparta 145.
- Anytus, and Alcibiades 25; bribes a jury 66; aids Andocides 86.
- Aphobus, aided by Onetor 45, 81; his litigation with Demosthenes 45, 54-56; aided by Thrasyllochus and Midias 54-56.
- Apollodorus, son of Pasion, his prosecution of Arethusius 63; assaulted by Arethusius 63.
- Apollodorus, of Megara, probably one of the assassins of Phrynichus 110<sup>5</sup>, 118.
- Apollophanes, member of a drinking club 32.
- Archedemus, defends Crito from sycophants 48-49.
- Archedratides, his prosecution of Alcibiades (son) 93.
- Archippus, prosecuted by Andocides 58.

- Areopagus 123; attacked by Ephialtes 101, 109-110, 120.
- Arethusius, prosecuted by and assaults Apollodorus 63.
- Arginusae, condemnation of the generals after 102, 103, 116.
- Aristarchus, his assassination of Nicodemus 51, 57, 111<sup>1</sup>.
- Aristides, probably not a club-member 1; his remark concerning clubs 39; at times used club methods 120; ostracised 137; suppresses a conspiracy 143.
- Aristion, prosecuted by the choregus 49-50.
- Aristogiton, see Harmodius.
- Ariston (Dem. 54), his suit against Conon 28, 31, 35, 57, 78-79.
- Ariston, adherent of Pisistratus 119.
- Aristophon, attacked in the courts 102-103.
- Aspasia, prosecuted by enemies of Pericles 104<sup>1</sup>.
- assemblies, see ecclesia; elective, manipulation of 128 ff.
- "associate", its meaning in this study 5<sup>3</sup>.
- Autolecythi 31-32.
- Baron, on bribery of electors 68<sup>2</sup>, 118<sup>2</sup>, 132; on canvassing of electors 127; on the clubs in elections 135-36.
- "blasphemous" clubs 32<sup>6</sup>.
- Boeckh, on the "white poplar" 44<sup>1</sup>.
- Boeotus, member of a club of sycophants 25, 52, 54, 63, 79-81; his litigation with Mantiheus 52, 54, 63, 80.
- boule, oligarchs in 65-66, 130; election of members 130-31.
- bribers, professional, of juries and assemblies 75-77, 118; their groups similar to clubs of sycophants 76-77.
- bribery of juries, 66-72, 75-77; probably not begun by Anytus 67; of frequent occurrence 67-69; laws against 67<sup>6</sup>; not difficult before Euclides 69-70; how accomplished after Euclides 70-72, 75-77.
- bribery, of accusers 58-60; of officials 90-91; of ecclesiasts 117-18; of orators 120; of electors 131-33.
- Büttner, his monograph on the clubs 3, 13.
- Cacodaemonistae 32-33, 36, 38.
- Callimachus, his plot against Cratinus 52; his influence with a magistrate 92.
- Callias, assaulted by Alcibiades 25; his quarrel with Andocides 53.
- Callibius, Spartan harmost 146.
- canvassing, of jurors 72-75; of ecclesiasts 117-18; of electors 127-28.
- Carcopino, on ostracism 136 ff.; on the clubs in ostracism 137, 138.
- caucuses, of the associates 111-13; in the *Ecclesiazusae* 113.
- Cedon, leader of the Alcmeonid faction 25.
- Cephisius, prosecutes Andocides 44, 86.
- Cephalus, aids Andocides 86.
- Charinus, adherent of Pericles 120.
- Charminus, directs assassination of Hyperbolus 107-108.
- Chariades, sued by Hagnon and Hagnotheus 49.
- Chiomacha, a club at Miletus 33<sup>6</sup>.
- choregus (defendant in Ant. 6), prosecuted by Philocrates 49-51, 73; his prosecutions against Philinus *et al.* 49-51, 73; accused of influencing a magistrate 92-93.
- Cimon, his club 19, 30, 137, 144; prosecuted by political opponents 101, 107; ostracised 137.
- Cimon (father of Miltiades), assassinated 110.

- Cinesias, his drinking club 32-33, 36.
- Cleon, satirized by Aristophanes 87, 60, 144<sup>4</sup>; attacks Pericles 101<sup>3</sup>.
- Cleophon, his condemnation 65-66, 102, 105-106.
- Clisthenes, opposes Isagoras 11-12, 18, 143; clubs of himself and adherents 12, 18, 137.
- clubs, see hetaeries.
- coercion, of accusers 60; of witnesses 84-85; of advocates 89-90; of officials 91-92; of speakers 121.
- congeniality, a factor in club organization 27-29.
- Conon, clubs of himself and sons 25, 28, 29, 31-33, 38, 57, 78-79, 95; aided by his associates against Ariston 57, 78-79.
- conspiracies, oligarchic 142-47.
- corruption, in courts and assemblies 41-42, 66, 77<sup>4</sup>, 117-18; in modern courts 42<sup>2</sup>.
- Cratinus, the plot of Callimachus against 52.
- Critias, attacks Theramenes 109; his political pamphlets 115; appeals to Sparta 146.
- Crito, defended by Archedemus 48-49; attempts to rescue Socrates 59<sup>1</sup>.
- Ctesiphon, prosecuted by Aeschines 86, 104<sup>1</sup>; aided by Demosthenes 86.
- Cylon, his club 13, 27, 30, 142; attempts to establish a tyranny 13, 142.
- Damon, ostracised 140.
- δεκάζειν* 67; etymology of 69<sup>6</sup>; explanations of bribery based upon 69.
- demes, election of officials 131; bribery in 132.
- Demosthenes, his litigation with Midias 51, 53, 57, 58, 60-61, 64, 74, 84, 91; his alleged attempt to suborn a witness 41; prosecuted by Theocrines 53, 90; prosecuted by Euctemon 53; his litigation with Aphobus 54-56; prosecuted by Nicodemus 58; jurors canvassed in his behalf 74; may have belonged to club 74, 75, 88; prosecutes Aeschines 74, 86; aids Ctesiphon 86, 104<sup>4</sup>; attacked in the courts 103; his election to the boule impugned 133-34; ridiculed by Aeschines and Philocrates in ecclesia 122; jeered by ecclesiasts 123.
- Demophantus, law of 34.
- Demostratus, adherent of Alcibiades 121-22.
- Dicaeogenes, aided by Melas 45, 80.
- Dicaeopolis, in the *Acharnians* 122, 126.
- dicasts, see juries.
- dinners and drinking parties of clubs 24-27, 128.
- Diocles, his villainy 62-63.
- Diodotus, death of the boy 49, 73, 92.
- Dionysidorus, his condemnation 106.
- Diopithes, associate of Nicias 19<sup>3</sup>.
- Diopithes (Aesch. 1. 63), favors Hegesander in arbitration 91.
- divinatio*, at Rome 48.
- Dracontides, introduces oligarchic measure 119.
- ἐκκλέπτειν* 59<sup>1</sup>.
- ecclesia, canvassing and bribery in 72, 117-18; "packing" of 115-16; speeches in 119-21; interruptions and applause in 121-23; voting in 123-25; omens in 126.
- eisangelia, political prosecutions by 99.
- electors, canvassing and bribery of 127-28, 131-33.
- enmity, as a motive for advocacy 86.
- ephebic service and the clubs 29.

- Ephialtes, his attacks on the Areopagus 101, 109-110, 120; assassinated 109-110.
- "ephors", so-called, of oligarchs 112-113, 119, 124, 129.
- Epichares, his prosecution of Theoclines 53, 58<sup>6</sup>, 89-90.
- Eratosthenes, prosecuted by Lysias 83, 86, 88, 107; aided by associates 83, 88, 107.
- Eratosthenes (Lys. 1), slain 62.
- Ergocles, condemnation of 60, 68; bribery of jurors at trial of 68, 70-72.
- Eubulides, his club 23, 28-29, 30, 57-58, 84, 113, 116, 121, 124, 130-131; his quarrel with Euxitheus 57-58, 84, 116, 121; manipulates deme-meeting 116, 121, 124-25; member of the boule 130-31.
- Eubulus, aids Aeschines 86.
- Eucrates, his condemnation 106.
- Euctemon, prosecutes Demosthenes 53.
- Euphiletus, his club, see Andocides; suggests mutilation of the Hermae 24, 35, 61; tries to intimidate Andocides 61; his debate with Andocides 113-14.
- Euphiletus (Lys. 1), slays Eratosthenes 62.
- Euxitheus 30; attacked by Eubulides 57-58, 84, 116, 121.
- evidence, latitude allowed in the introduction of 99.
- factions, the old aristocratic 11-12, 16.
- "filibustering" in assemblies 121.
- finer, payment of by friends 46.
- Finsler, on the Homeric *ἑταῖροι* 5<sup>1</sup>, 14-15.
- Four Hundred, revolt against 117; their appeal to Sparta 144.
- friendship, as a motive for advocacy 85.
- grain-dealers, in the Piraeus 95.
- gymnasia and the clubs 29.
- Hagnon and Hagnotheus, their suit for an estate 49.
- Hagnotheus (Isaeus 4), see Hagnon.
- Hagnotheus (Isaeus *fr.* 22), his club affiliations 40<sup>4</sup>, 89.
- Harmodius and Aristogiton 25.
- Headlam, on political use of the courts 98<sup>1</sup>; on election of councillors 131<sup>2</sup>; on the lot 134<sup>3</sup>.
- "heckling" in assemblies 122-23.
- Hegesander, his drinking club 26, 52, 61; his quarrel with Pittacus 52, 61, 91.
- "Hell-Fire Club" 32<sup>6</sup>.
- Hermae, mutilation of the 24, 30, 35, 37-38, 61, 101<sup>4</sup>, 113-14.
- Hermocopids, see Hermae.
- Herodes, the political pamphlet erroneously ascribed to 115.
- hetaeries, their great influence 1-2, 20, 40, 98, 111, 126-27, 130-31, 135, 138; membership in them common 1, 23; Hüllmann on 2; Vischer on 2-3; Büttner on 3; various discussions of 3<sup>4</sup>; referred to by names of prominent members 7, 33; no ancient account of their origin 10; their great antiquity 11-17; their part in the struggle between Clisthenes and Isagoras 11-12; under the aristocracy 16; of extreme oligarchs 18, 143-47; of moderates 19-23; of democrats 17, 18-19, 110; found in all parties 20-24; in the revolutionary period 19-23, 97 ff., 127; in the fourth century 23; at beginning of Peloponnesian war 39; their dinners and drinking parties 24-27, 113, 128; their social meetings a means of avoiding suspicion 27, 113; their meetings in private houses 26, 29; their legitimate activities 40<sup>5</sup>; system of mutual support in certain 79-80; their political use of the



- courts 105-107; in deme elections 130-31.
- ἐταρσία 4, 5-6, 7; implication attached to after the Four Hundred 9; the relation of 38-39, 83-84.
- ἐταῖροι, the Homeric 14-15, 27; of Greek and Macedonian kings 15<sup>3</sup>; of primitive kings 15-16.
- ἐταῖρος 4, 5; in Homer 5, 14-15; implication attached to after the Four Hundred 7-9.
- Hiero, associate of Nicias 19<sup>3</sup>.
- Hipparchus, ostracised 137.
- Hippias, seeks Persian aid 142.
- Hüllmann, his monograph on the clubs 2; on jury-bribing 69.
- Hyperbolus, assassinated 35, 107-108; ostracised 137-38, 139.
- interruptions of speakers in assemblies 121-23.
- Isagoras, opposes Clisthenes 10, 11-12, 18, 143; attempts to establish a tyranny 143.
- Ithyphalli 31-32.
- juries, their knowledge of facts 41-42; "packed" 65-66; how selected 65<sup>2</sup>; bribed 66-72, 75-77; canvassed 72-75; character of the Athenian 99-100.
- Lampon, adherent of Pericles 120.
- laws, against the dropping of prosecutions 58<sup>6</sup>; of Solon 66, 99<sup>1</sup>; against bribery 67<sup>6</sup>; against perjury 77-78; governing introduction of advocates 85; against payment of advocates 87; framed in general terms 98-99; enactment of eisangelic law 99<sup>2</sup>.
- legislation, obstruction of by litigation 104.
- Leptines, his law attacked in the courts 47; indicted for proposing illegal measures 60.
- lexicographers, their explanations of jury-bribing 69.
- lot, improper administration of 133-35; methods of fraud in drawing 134-35.
- Λόζου δέξας 69; origin of the phrase 70.
- Lycus, statue of 69; hero-patron of dicasts 70; "Troop of Lycus" 69-70.
- Lygdamis, of Naxos, aids Pisis-tratus 142.
- Lysander, helps install the Thirty 146.
- Lysias, his prosecution of Eratosthenes 86, 88.
- Lysitheus, member of a drinking club 32-33.
- magistrates, see officials.
- Mantitheus, his litigation with Boeotus 52, 54, 63.
- Melas, the Egyptian, his club of sycophants 44-45, 80, 95<sup>3</sup>.
- Meletus, associate of Andocides 61.
- Meneceles and Mnesicles, their club of sycophants 23, 25, 28, 46, 52, 54, 77, 79-81, 95<sup>3</sup>, 118; system of mutual support in their club 79-80.
- Menippus, adherent of Pericles 120.
- v. Mess, on the sources of the Aristotelian *Constitution* 22.
- Metiochus, adherent of Pericles 120.
- Midias, his club 23, 40, 45-46, 54, 57, 60-61, 64, 75, 79, 85, 88, 93, 95, 129-30; his litigation with Demosthenes 51, 53, 57, 60-61, 64, 74, 84, 91; aids Aphobus 54-56; canvassing of jury in behalf of 74; associates commit perjury for 79; persecutes the arbitrator Straton 91-92; corrupts the archon 125; elected epimelete 129; elected Pylaeon deputy 130.
- Miltiades, condemnation of 100, 103.

- Mnesarchides, associate of Midias 64.
- Mnesicles, see Meneclēs.
- moderate party, its part in the oligarchic revolutions 20-22; clubs in the 19-23.
- Mystalides, member of a drinking club 32.
- Mysteries, profanation of 36, 37-38.
- Neoptolemus, associate of Midias 64.
- Nicias, his club 19, 120, 137-38; opposes Sicilian expedition 116, 117, 121-22.
- Nicobulus, his litigation with Pantænetus 92, 94.
- Nicodemus, assassinated 51, 57, 111<sup>1</sup>; prosecutes Demosthenes 58.
- Nicomachus, his falsification of the laws 66.
- Nicostratus, briber of jurors and ecclesiasts 68, 76, 96, 118.
- Numeniastæ 32.
- oaths, oligarchic 34; for special undertakings 34-35.
- officials, their improper practices 90-93; bribed 90-91; intimidated 91-92; attacked in the courts 104-105; their improper practices in assemblies 125-26.
- omens, political use of 126.
- Onetor, aids Aphobus 45, 81.
- orators, reliability of 41-42; corruption among 120.
- "packing", of juries 65-66; of assemblies 115-16.
- pamphlets, political 113-15; quoted by Aristotle 22, 115.
- Pantænetus, his club 79, 89, 93, 94; his litigation with Nicobulus 79, 92, 94; associates perjure themselves for 79.
- Pericles, his club 17<sup>4</sup>, 18, 107, 119-20, 137; his condemnation 101, 103, 107; his prosecution of Cimon 101<sup>1</sup>; his appearance for Aspasia 104<sup>4</sup>; ostracism of his adherent Damon 140; his fear of ostracism 140<sup>5</sup>.
- perjury, of frequent occurrence 77 ff.; laws against 77-78; clubs responsible for much 78 ff.; subornation of 78, 81; enmity as a motive for 78, 81; caused by intimidation 82.
- "pettifoggers", see sycophants.
- Phæax, his club 33<sup>5</sup>, 137-38; concerned in ostracism of Hyperbolus 137.
- Phidias, prosecuted by enemies of Pericles 104<sup>1</sup>.
- Philinus, prosecuted by the choregus 49-50, 73
- Philip of Macedon, aids Aeschines 45, 81.
- Philippides, associate of Midias 64.
- Philocrates (Ant. 6), prosecutes the choregus 49-51; attempts to influence a jury 73.
- Philocrates (Lys. 29), prosecution of 60, 68, 70.
- Philocrates, the orator, jeers at Demosthenes 122.
- Phocion, aids Aeschines 86.
- "phylarchs", so-called, of oligarchs 112, 124.
- Pisander, at Athens 1, 20, 34, 108, 119, 121.
- Phrynichus, assassinated 110, 118; his speech to the associates 114; envoy of oligarchs to Sparta 145.
- Pisistratids, probably members of clubs 12-13; their adherents support Isagoras 12; assassinate Cimon 110; their expulsion 142.
- Pisistratus, probably member of a club 13; aided by Ariston 119; his second restoration 142.
- Pittalacus, his quarrel with Timarchus and Hegesander 26, 52, 61, 91.
- pleading, latitude allowed in 99.

- pledges, for special undertakings 35.
- Ploutis, a club at Miletus 33<sup>6</sup>, 38.
- Polyeuctus, prosecuted by Alexander 86.
- Polystratus, his condemnation 59.
- Praxagora, in the *Ecclesiazusae* 113, 116, 122, 123, 124.
- proboule 64.
- prosecutions, dropping of 47, 58<sup>6</sup>.
- prosecutor, public, absence of in Athens 48, 98.
- Pulytion, associate of Alcibiades 25, 36.
- records, of fifth century litigation scarce 73; tampering with official 92.
- sacrilegious spirit of certain clubs 36, 37-38.
- Sandys, on Autolecythi 31.
- scolia, their political character 25-26.
- slanders, political 104, 140.
- social equality, a factor in club organization 27-29.
- Socrates, not a club member 1; his remark concerning clubs 1, 23; his suggestion to Crito 48; aided by Crito 59<sup>1</sup>.
- Solonian laws 66, 99<sup>1</sup>.
- Spartan intervention 12, 142-47.
- speeches, in caucuses 113-14; in assemblies 119-21; in the matter of ostracism 139<sup>2</sup>.
- Straton, the arbitrator, suffers at the hands of Midias 91-92.
- Strombichides, his condemnation 106.
- συγδεκάζειν* 67.
- συνωμοσία* 4, 6, 7, 8<sup>7</sup>.
- συνωμότης* 4, 5; in Aristophanes 8<sup>7</sup>.
- "sycophant", its meaning in this study 23<sup>4</sup>.
- sycophants 48, 49, 58; their clubs 23, 25, 44-45, 46, 52, 77, 79-81, 95<sup>3</sup>, 96, 118.
- Tammany societies 32.
- tax-farmers, business club of 43-44, 46, 95.
- terminology, of the clubs 4-7; of the oligarchic revolution 7-9.
- Teucrus, his informations 30.
- Theagenes, of Megara, aids Cylon 142.
- Themistocles, his club 1, 11, 17<sup>4</sup>, 18, 25, 137; his connection with Ephialtes 101<sup>2</sup>; ostracised 137.
- Theocrines, prosecuted by Epichares 53, 58<sup>6</sup>, 89-90; his club 90, 107; aided by his associates 107; his brother assassinated 111<sup>1</sup>; his brother hieropoios 134.
- Theocritus, the informer 34-35, 83, 96.
- Theramenes, his opposition to the Four Hundred 12, 145; his activity in the second revolution 22, 65, 83, 119; his "trial" and condemnation 109, 117; his attack upon the generals 102<sup>1</sup>, 116, 125, 126<sup>5</sup>.
- Thessalus, attacks Alcibiades 101<sup>4</sup>.
- Thirty, establishment of 115, 123-24, 146; appeal to Sparta 146.
- Thrasylbulus, of Calydon, probably one of the assassins of Phrynichus 110<sup>5</sup>.
- Thrasyllus, aids Andocides 86.
- Thrasyllochus, brother of Midias, aids Aphobus 46, 54-56.
- Thucydides, of Alopece, his club 19, 120, 137; opposes Pericles 120; ostracised 137.
- Thucydides ([Dem.] 58), prosecuted by Theocrines 53.
- Timocrates, aids Aphobus 81.
- Timarchus, his dicing club 26, 52, 61; his quarrel with Pittalacus 52, 91; prosecuted by Aeschines 52, 88; charged with bribery 132.
- trade-guilds, post-classical 5<sup>9</sup>, 27-28.
- treachery toward an associate a grave offense 38-39.

treason, attempted by certain oligarchic clubs 142-47.

Triballi 31-32, 36.

Vischer, his monograph on the clubs 2-3; on their origin 10-11; on their political tendencies 17. voting, tricks in 124, 128.

witnesses, associates as 78-80, 82-83, 85; bribery of 78, 81, 85; intimidation of 82, 84-85; their excuses to avoid testifying 82.

Xanthippus, accuses Miltiades 100<sup>s</sup>

Xenotimus, briber of jurors and ecclesiasts 67, 76, 96, 118.



## REGISTER OF PASSAGES

From the orators, historians, Aristophanes, and Plato. For convenience of reference, spurious works have been listed under the authors with whose names they are commonly associated. Scholia are indicated by "(sch.\*)" following the passages to which they refer.

### AESCHINES

I	PAGE
.....	52
2.....	98
34.....	123
58-64.....	26
60 ff.....	61
62.....	52
63.....	91
63 ff.....	52
81 ff.....	123
86.....	76, 118
86 ff.....	76
86-87.....	68, 69
86-88.....	41, 118
87 (sch.).....	69
106.....	133
106-107.....	132, 134
170 ff.....	88
172.....	107
172 ff.....	111
173.....	88
II	
15.....	126
77.....	109
148.....	58, 111
154 ff.....	41
154-55.....	81
170.....	87
184.....	85, 86, 89
III	
.....	104
1.....	74
3.....	105, 125, 126, 134
52.....	58
62.....	125, 133
73.....	125, 133
115.....	130
194.....	103, 104
232.....	68
235.....	109

### ANDOCIDES

I	PAGE
12.....	18, 25
13.....	36
15.....	30, 36, 37
16.....	36
17.....	36
34.....	30
34 ff.....	30, 37
36.....	144
38-39.....	113
42.....	35
47.....	7
52.....	30
54.....	5, 83
54 ff.....	24
54-69.....	83
59.....	37
61.....	24, 113, 114
61 ff.....	24, 30
63.....	5, 30
63 ff.....	61
64.....	26
67.....	35
68.....	83
74.....	68, 78
98.....	34
100.....	6, 9
117 ff.....	53
121.....	44, 53
132.....	44
132 ff.....	43
133.....	44
150.....	86
II	
4.....	105
7-10.....	83
IV	
4.....	5, 18, 138
14.....	5, 18

<i>fr. or. II</i>	PAGE		PAGE
.....	5, 8	376 ff.....	116, 124
ANTIPHON		399.....	123
2 $\alpha$		399 ff.....	123
5 ff.....	62	431 ff.....	123
2 $\beta$		431-33.....	123
9.....	46, 62	<i>Knights</i>	
V		257.....	5, 8, 144
9.....	92	438-39.....	60
10.....	50	452.....	5, 8, 144
11 ff.....	92	465 ff.....	144
17 ff.....	92	475 ff.....	144
68 ff.....	109	476.....	6, 8, 22
VI		477.....	7
9.....	49	589-90.....	5
11 ff.....	49	628.....	5, 8
12.....	49	651.....	123
21.....	49, 73	666.....	123
34.....	49	710-11.....	103
34 ff.....	73	852 ff.....	108
34-35.....	50	852-57.....	144
35.....	49, 73	862.....	5, 8
36.....	50, 51, 54	862-63.....	144
37.....	50	863.....	22
38.....	50	1085 (sch.).....	5, 19
38-40.....	50	<i>Lysistrata</i>	
41.....	50, 93	387 ff.....	121
45-46.....	50	574 ff.....	127
49.....	50	574 ff. (sch.).....	127
51.....	49	574-78.....	20
ARISTOPHANES		577.....	22
<i>Acharnians</i>		577 (sch.).....	22
37-39.....	122	1153.....	5, 13
65 ff.....	122	<i>Peace</i>	
169 ff.....	126	908-909.....	125
598.....	130	<i>Thesmophoriazusae</i>	
<i>Birds</i>		936-37.....	125
988 (sch.).....	19	<i>Wasps</i>	
<i>Ecclesiazusae</i>		342 ff.....	108
17-18.....	113	345.....	5, 8
57 ff.....	113	389.....	70
116-284.....	113	483.....	5, 8
213.....	123	488.....	5, 7, 8
248 ff.....	122	507.....	5, 8
		525.....	32
		548 ff.....	100

	PAGE
552 ff.....	73
661 ff.....	70
953.....	5, 8

## ARISTOTLE

*Constitution of Athens*

<i>fr. pr. part dep.</i> 9.....	7, 13
8.1.....	133
9.2.....	99
14.1.....	119
15.2.....	142
19.2ff.....	142
19.3.....	25, 142
20.....	12, 18, 143
20.1.....	6, 11, 127, 137
20.3.....	13
20.5.....	25
21.1.....	12, 143
21.1-2.....	11
22.4.....	11, 137, 142
22.5.....	133
25.1.....	120
25.1-2.....	101
25.3.....	22, 101
25.4.....	109
27.1.....	101
27.5.....	66
28.2.....	100, 101
29.4.....	106
30.2.....	129
31.1.....	129
34.3.....	6, 9, 21, 22, 146
34 <i>fin</i> .....	119
35.....	129
35.2.....	99
36.....	146
37.1.....	109
37.2.....	146
43.5.....	139
48.3.....	134
54.1-2.....	134
54.6-7.....	134
54.8.....	131
56.4.....	129
57.2.....	50
57.3.....	49
57.4.....	50

	PAGE
62.1.....	128, 130, 132, 133
62.3.....	131
63 ff.....	65
<i>col.</i> 31.14.....	91
“ 31.14-15.....	67
“ 31.32 ff.....	67
“ 32.5 ff.....	67
“ 33.2-4.....	67
“ 33.10-15.....	91
“ 33.12 ff.....	67
“ 33.20 ff.....	67, 71
“ 34.33 ff.....	67
“ 35.2.....	67

*Politica*

1273 b 39.....	110
1284 b 22.....	136
1287 b 30.....	16
1305 b 30 ff.....	6, 16
1310 a 9.....	34
1313 a 41.....	6

*Rhet. ad Alex.*

1446 b 24.....	6
----------------	---

## DEMOSTHENES.

## I

5.....	141
--------	-----

## IV

47.....	103
---------	-----

## VIII

17.....	103
38.....	123
69.....	103
71.....	103

## IX

37.....	68
---------	----

## X

11.....	123
70.....	123

## XIII

3.....	123
--------	-----

## XVIII

.....	104
5 ff.....	104





	PAGE		PAGE
64.....	22, 123	18.....	7, 77, 79, 95
95.....	123	25.....	52
XXVI		XL	
17.....	103	.....	52
19.....	123	9.....	79, 80, 95, 96
XXVIII		32.....	80
17.....	46, 55	32-33.....	52
XXIX		57.....	25, 52, 63
22-23.....	6, 28, 78, 81	58 ff.....	80
24.....	81	59.....	28
28.....	45, 81	XLIII	
XXX		7.....	35
.....	45	7 ff.....	96
3.....	77	7-10.....	88
XXXI		30.....	88
.....	45	38.....	22
XXXII		XLIV	
10.....	22	3.....	77, 81, 87
10 ff.....	95	XLV	
31-32.....	85	6.....	72
32.....	103	67.....	23
XXXIII		XLVI	
37.....	77	8.....	68
XXXIV		25.....	22
18.....	81	26.....	68, 87
19.....	77	XLVII	
21.....	92	2.....	78
XXXVI		XLVIII	
53.....	103	9.....	35
XXXVII		36.....	87
34.....	92	44.....	41, 77
39.....	7, 22, 79	XLIX	
39 ff.....	94	19.....	82
48.....	22, 77, 79, 89	LI	
XXXIX		15.....	37
.....	52	LII	
2.....	79, 80, 96	14.....	92
3.....	81, 105	30-31.....	92
12.....	134	LIII	
13.....	79	1.....	98
13-14.....	80, 95	14.....	53, 63, 93
		17.....	63

LIV	PAGE		PAGE
	41	7	7, 85
<i>passim</i>	25, 77	10 ff	58
3 ff	29	22-23	53
7	25, 26, 28, 61	28 ff	111
13-15	57	29	125, 134
14	25, 30, 57	36	53
14 ff	28, 31	40	25
17	25, 35	42	6, 42, 90
20	25	42 ff	90
30 ff	78	43	59
30-40	25	67	145
33	25, 78		
33-35	28	LIX	
33-39	79	1	98
35	5, 77	43	123
39	5, 25, 28, 31, 36	99	141
LVII		DINARCHUS	
<i>hypothesis</i>	84	I	
<i>passim</i>	23	60	68
8	125, 130, 131	II	
8 ff	23, 84, 126	4	68
8-10	124	16	68
8-14	41, 113	17	68
9	121	20	68
10	30		
10 ff	116	III	
13	22, 124, 126	5	68
16	22		
17	30, 84	DIODORUS SICULUS	
24	81	XII	
26	131	39	101
52	81	45.4	101
59	7, 22, 23		
59-60	23	XIII	
60	7, 22, 23, 131	64	66
62	7	76.5	141
63	7, 22	101.6	102, 123
63 ff	23	101.6-7	102, 116
63-64	23	102.5	102
64	58	103.2	102
LVIII		XIV	
1	53	3.5	146
1 ff	98		
4	53, 86, 90	XV	
5 ff	59	82	6
5-6	58		
		HELLENICA OXYRH.	
		12.2	6

HERODOTUS			VI	PAGE
	I	PAGE	1-2.....	85
59.....			VIII	
61.....			3.....	96
	V		40 ff.....	62
63-65.....			41.....	62
66.....			42.....	84
69-70.....			XII	
70.....			<i>hypothesis</i> .....	84
71.....			12.....	84
72-73.....			<i>fr. 22</i>	
74.....			2.....	6, 40, 89
74 ff.....				
96.....			ISOCRATES	
	VI		I	
100.....			23.....	77
102.....			III	
103.....			54.....	6, 7
115 ff.....			IV	
121 ff.....			79.....	6
123.....			VII	
124.....			66-67.....	109
136.....			68.....	146
	HYPERIDES		VIII	
	II		50.....	68, 118, 132
10-11.....			XV	
19-20.....			20-22.....	72
	III		21-23.....	100
7-8.....			XVI	
8.....			5 ff.....	102
11 ff.....			6.....	6, 18, 36
12.....			6 ff.....	25, 26, 101
30.....			7-8.....	102
	ISAEUS		8.....	5, 102
	IV		XVII	
1.....			12.....	53
30.....			33-34.....	135
	V		XVIII	
7 ff.....			9.....	56
7-9.....			9 ff.....	60
8.....			9-10.....	100
8-9.....			10.....	58
40.....			11.....	67, 76

	PAGE		PAGE
11-12.....	92	44.....	124
14.....	58	46-47.....	34
51.....	22	47.....	88
51 ff.....	77	48.....	109
52-53.....	51	55.....	6
	XX	67.....	34
11.....	109	71-77.....	146
	XXI	72.....	115, 121
1.....	85	73.....	119, 123
	LYCURGUS	75.....	123, 124
	<i>In Leocr.</i>	75-76.....	113, 115, 124
20.....	82, 85	77.....	34
112.....	110	85.....	88
	LYSIAS	86.....	86, 87, 88
	I		XIII
44.....	62	1.....	98
	III	7-12.....	65
20.....	55	12.....	66, 104, 106
	IV	12-22.....	104
3 ff.....	133	13 ff.....	106
9.....	56	17.....	104, 106
	V	18-22.....	84
1.....	85	19.....	5, 96
	VI	20.....	66, 106, 130
11-12.....	58	21.....	34
23.....	83	71.....	110
29.....	125	72.....	120
45.....	109		XIV
	VII	2-3.....	86
21.....	84		XV
	VIII	1 ff.....	93
18.....	77		XVIII
	X	5.....	106
1.....	33		XIX
12.....	33	6.....	100
	XII		XX
2.....	98	7.....	59
9-10.....	35	10.....	59
43.....	5, 9, 88	12.....	46
43-44.....	112, 119, 129	18.....	77, 82, 84
43-47.....	83		XXI
		11.....	68
		20.....	33
		25.....	68



XXII	PAGE		PAGE
.....	95	45A.....	59
		45AB.....	58
XXIV			
19.....	96	<i>Definitions.</i>	
20.....	44	413C.....	27
XXV		<i>Gorgias</i>	
9.....	20	487D.....	18
XXVI		510A.....	5
6 ff.....	91	515E-516A.....	101
XXVII		516E.....	101
7-8.....	68	<i>Laws</i>	
XXIX		636B.....	29
1.....	60	855B.....	46
2.....	60, 72	856B.....	126
6.....	60	<i>Phaedo</i>	
7.....	77, 81	89D.....	18
12.....	68, 70	<i>Republic</i>	
XXX		365D.....	6, 7, 37, 40
2.....	66	443A.....	5, 39
10-12.....	65, 66	492B.....	123
12-14.....	106	<i>Theaetetus</i>	
14.....	66	173D.....	6, 7, 24, 126
<i>fr. or. X</i>		PLUTARCH	
.....	58	<i>Agesilaus</i>	
<i>fr. 53</i>		32.....	6
2.....	32, 36	<i>Alcibiades</i>	
<i>fr. or. LXXXV</i>		3.....	115
.....	33	4.....	18, 25
PLATO		8.....	18, 25
<i>Axiochus</i>		13.....	137
368E.....	7, 125, 126	18.....	6
<i>Apology</i>		19.....	7, 25, 102, 120
17D.....	72	19 ff.....	101
20E.....	72	20-21.....	102
21A.....	5	22.....	18, 25, 36, 102
30C.....	72	25.....	110
32B.....	102, 105, 123	26.....	108, 121
36B.....	1, 6, 23	<i>Aristides</i>	
38B.....	46	2.....	1, 5, 6, 18, 39, 120
<i>Crito</i>		3.....	120
44B-45C.....	46	7.....	137
44E.....	59	13.....	143
		26.....	68

	<i>Cato</i>	PAGE
22.....		6
	<i>Cimon</i>	
14.....		101
17.....	5, 19, 30, 137, 144	
	<i>Coriolanus</i>	
14.....		66
	<i>Demosthenes</i>	
12.....		58
	<i>Lysander</i>	
5.....		6
13.....		6
21.....		5, 6
	<i>Nicias</i>	
5.....		19, 120
11.....	7, 114, 137	
12.....		121
	<i>Pelopidas</i>	
5.....		6
	<i>Pericles</i>	
7.....	5, 18, 120, 140	
9.....		101
10.....	101, 109, 144	
11.....	9, 19, 137	
14.....	6, 19, 120	
16.....	5, 7, 18, 24	
20.....		120
31.....		104
31 ff.....		101
31-32.....		104
32.....		104
33.....		101
35.....		101
	<i>Pyrrhus</i>	
23.....		7
	<i>Solon</i>	
12.....		5, 13
30.....		119
	<i>Themistocles</i>	
3.....		18
24.....		18
32.....	5, 8, 114	

	<i>Moralia</i>	PAGE
186A.....		5, 6
298C.....		33, 38
581C.....		59
583A.....		6
807AB.....		18
811CD.....		120
811C-F.....		18
811F.....		120
812CD.....		120
812D.....		120

## THUCYDIDES

## I

3.2.....		141
107.4-6.....		144
111.1.....		141
115.2.....		141
126.5.....	5, 13, 142	
137.....		18

## II

2.2.....		141
12.2.....		144
33.1.....		141
59.....		101
65.1-2.....		101
65.2.....		101
65.4.....		101

## III

18.1.....		141
62.4.....		141
65.2.....		141
81.....		107
82.1.....		141
82.5.....		6
82.6.....	6, 7	
82 ff.....		39

## IV

7.....		141
49.....		141
76.....		141
76.3.....		141
86.5.....		141
103.2-3.....		141
110.1.....		141

V	PAGE
4.3.....	141
5.1.....	141
33.1.....	141
62.2.....	141
76.2.....	5
116.3.....	141

VI	PAGE
13.....	18
13.1.....	116, 117
14.....	105
24.4.....	124
25.1.....	121
27.....	6, 144
27.3.....	101
28.....	101
28.2.....	102, 144
29.....	102
29.3.....	120
53.....	102
53.3.....	101
57.2.....	5
60.1.....	6, 101, 144
61.....	6, 102
61.1.....	144
61.7.....	102
64.2.....	5

VII	PAGE
48.2.....	141
73.3.....	141

VIII	PAGE
48.2.....	5, 8, 34, 112
48.3.....	8, 20, 112, 127
48.4.....	5, 8
48.4 ff.....	114
48.4-7.....	112
48-49.....	6
49.....	112, 119
53.....	119
53.2.....	121, 123
54.4.....	1, 6, 8, 20, 34, 40, 112, 126, 127, 135
60.1.....	141
65.2.....	5, 8, 22, 108
66.1.....	22, 112, 119
66.2.....	108, 121
66.2-3.....	7

PAGE	PAGE
66.3.....	123
66.5.....	110
67.2.....	106
68.1.....	119
68.1-2.....	119
69.....	112
69.3.....	108
69.4.....	108
70.2.....	5, 107, 108
73.1.....	22
73.2.....	22
73.3.....	35, 107
73.4.....	22
81.2.....	6
86.2.....	123
86.7.....	144
89.1.....	144
89 ff.....	12
90.1-2.....	145
90.3.....	145
91.1-2.....	145
91.3.....	145
92.2 ff.....	110
92.3.....	145
92.4.....	5, 8, 146
92.6.....	108
93.2.....	145
93.2-3.....	117
94.2.....	145

## VIT. X ORATT.

<i>Antiphon</i>	
22 ff.....	145

<i>Demosthenes</i>	
9.....	68

## XENOPHON

<i>Apology</i>	
23.....	59

*Hellenica*

I	PAGE
1.31.....	141
7.8.....	7, 102, 116
7.8-11.....	126
7.12.....	104, 123
7.13.....	104

	PAGE	<i>Memorabilia</i>	PAGE
7.13 ff.....	102	I	
7.14-15.....	105	1.7-8.....	19
7.35.....	102	II	
II		3.46.....	145
2.21-22.....	106	9.1.....	58
2.23.....	146	9.5 ff.....	81
3.2.....	146	9.5-8.....	49
3.11.....	129	IV	
3.13 ff.....	146	2.1.....	44
3.17 ff.....	146	<i>Politeia</i>	
3.23.....	109, 117	2.15 ff.....	144
3.23 ff.....	109	3.3.....	125, 126
3.50.....	109	3.1-4.....	90
3.51.....	109	3.2.....	73
3.55.....	109	3.7.....	67
4.21.....	109	<i>Symposium</i>	
4.28.....	146	1.4.....	127
V			
2.25.....	6		















